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In the United States District Court,

NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO. } No. 420.

"NEW ALMADEN."

TRANSCRIPT OF THE RECORD.

P. DELLA TORRE, Esq., U. S. Attorney.
EDMUND RANDOLPH, Esq., of Counsel.

A. C. PEACHY, Esq.
FRED'K BILLINGS, Esq. } for Claimant.

SAN FRANCISCO:
1859.

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TRANSCRIPT

OF THE

PROCEEDINGS,

In Case No. 366,

ANDRES CASTILLERO, Claimant,

VS.

The UNITED STATES, Defendant,

FOR THE PLACE NAMED

NEW ALMADEN.

SAN FRANCISCO:
WHITTON, TOWNE & CO., PRINTERS, EXCELSIOR STEAM PRESSES,
125 CLAY STREET, CORNER SANSOME.
1858.

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OFFICE OF THE BOARD OF COMMISSIONERS

TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS

IN THE STATE OF CALIFORNIA.

BE IT REMEMBERED, That on this thirtieth day of September, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the city of San San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit;

The petition of Andres Castillero, for the place named "New Almaden," was presented, and ordered to be filed and docketed with No. 336, and is as follows, to wit:

(Vide page 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

San Francisco, April 5, 1853.

In case No. 366, Andres Castellero, for the place named "New Almaden," the deposition of F. Alden, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with documents marked H. I. T, Nos. 1, 2 and 3, annexed thereto, was filed;

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(Vide page 10 of this Transcript.)

San Francisco, Sept. 28, 1853.

Case No 366 was ordered, on motion of claimant's counsel, to the foot of the docket.

San Francisco, Feb'y 18, 1854.

In the same case the deposition of Chester S. Lyman, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 15 of this Transcript.)

San Francisco, Sept. 26, 1854.

Case No. 366 was ordered to be placed at the foot of the 2d class cases on the trial docket.

San Francisco, Oct. 23d, 1854.

In the same case the counsel for the claimant filed the following affidavit, to wit:

(Vide page 19 of this Transcript.)

San Francisco, November 7, 1854.

Case No. 366, on motion of the claimant's counsel, with the consent of the U. S. Law Agent, was ordered to be placed at the foot of the 4th class cases on the trial docket.

San Francisco, January 30, 1855.

In the same case the deposition of José Maria Lafragua, a witness in behalf of the claimant, taken before Commissioner Peter Lott, with documents marked "Exhibits, A., P. L," " B., P. L.," " C., P. L.," " D., P. L.," annexed thereto, was filed;

(Vide page 22 of this Transcript.)

San Francisco, March 19, 1855.

In the same case the depositions of Frank Lewis, José Noriega, and Antonio Suñol, witnesses in behalf the claimant, taken before Commissioner Peter Lott, the last with document marked " Exhibit A., P. L.," annexed thereto, were filed;

(Vide pages 35, 38 and 43 of this Transcript.)

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San Francisco, March 21, 1855.

In the same case the depositions of Domingo Danglada, and Francisco de Leon, witnesses in behalf of the claimant, taken before Commissioner Alpheus Felch, were filed;

(Vide pages 45 and 48 of this Transcript.)

San Francisco, March 28, 1855.

In the same case the deposition of José Fernandez, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed;

(Vide page 51 of this Transcript.)

San Francisco, April 3d, 1855.

Case No. 366 was submitted on briefs and taken under advisement by the Board.

San Francisco, Jan'y 8, 1856.

In the same case, Commissioner Alpheus Felch delivered the opinion of the Board—Commissioner R. Aug. Thompson dissenting—confirming the mining rights, and rejecting the claim for the land:

(Vide pages 139 and 197 of this Transcript.)

And the following order was made, to wit;

(Vide page 220 of this Transcript.)

PETITION.

To the Honorable Commissioners to settle Private Land Claims in California:

The petitioner, Andres Castillero, respectfully shows:

That in the year 1845, the petitioner, Andres Castillero, discovered a mine of cinnabar in the then jurisdiction of San José, and in the now county of Santa Clara, in this State:

That having formed a company for working said mine, he, on the 22d day of November and on the 3d day of December, A. D. 1845,

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received from the magistrate of that jurisdiction, in due form, the juridical possession of said mine, and land to the extent of three thousand varas in all directions: all of which is shown by the duly authenticated papers, issued from the office of said magistrate, copies of which are submitted herewith marked "A," with translations marked "B."

That said record of testimony of his mining possession was soon after submitted to the Junta de Fomento y Administracion de Mineria, the highest mining tribunal in the Republic of Mexico; which tribunal, after mature deliberation, and an examination of the laws relative thereto, on the 14th day of May, A. D. 1846, declared said juridical possession, although embracing an unusually large extent of land, to be in accordance to law, and fully justified by the peculiar circumstances of the case, and they therefore recommended to the Executive power of the Republic, through the Minister of Justice, not only that the mining possession of three thousand varas in all directions from the mouth of the mine, be confirmed but that the Executive should also grant in fee to the said Castillero, for the benefit of his mine, two square leagues of land on the surface of his mining possession.

That on the 20th day of May, A. D. 1846, the Minister of Justice replied to the President of the "Junta de Mineria" that the President of the Republic had acceded to the recommendations of the Junta and the petition of Castillero, and granted the land so asked for, and so recommended.

That on the same day the Minister of Justice officially notified the Minister of Exterior Relations, Government and Police, of the aforesaid grant of the President of the Republic, in order that the corresponding decree or order might be issued; all of which is fully shown by the duly attested documents issued from the corresponding offices in Mexico; copies of which, and also copies of the duly authenticated certificates of the Minister of Interior and Exterior Relations, and of the Secretary of the Mining Tribunal, that the aforesaid grant of land to the petitioner Castillero, was legal and approved by the Supreme Government, are submitted herewith, marked "C," with translations marked "D."

That on the 23d day of May, A. D. 1846, the Minister of Exterior Relations, Government and Police issued his order to the Governor of California, notifying him of the aforesaid grant to Castillero, and directing the said Governor to put Castillero in possession of the two square leagues so granted; a copy of which order or patent of title is submitted herewith, marked "E.," with a translation marked "F."

That the said Castillero, immediately on receiving the aforesaid grant from the government of Mexico, started for California for the purpose

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of measuring off and taking the juridical possession of the land so granted, but was prevented from so doing and interrupted in his journey by the operations of the war which was then commencing between the United States of America and the Republic of Mexico; he however still continued by his agents and servants in the occupation of the land of his mining possession; and in the latter part of the year 1847, or the beginning of the year 1848, and as soon as the operations of the war between the two nations would permit, he procured a survey of the land so granted, and marked out its boundaries; a copy of which notes of survey, dated March 7th, 1848, and a plot of the land, made and executed by Chester S. Lyman, a duly appointed and authorized surveyor of the Middle Department of California, copies of which notes of survey and plot are submitted herewith, marked "G."

And the petitioner further shows: that the said survey was made with as much formality as was possible, and by the most skilful and competent officer to be procured in the then peculiar state of the country, and under the then organized *de facto* government of California; that in order to avoid all questions of boundary with the claimants of the neighboring lands, the agents of Castillero and those holding under him in making the said survey and marking the boundaries of his grant as aforesaid, so located it on their then mining possession which had been given to Castilero in 1845, and duly approved as aforesaid, as to leave the mouth of the said quicksilver mine now called "New Almaden," in the centre, or nearly so, of said grant so located, and to include little or no land on the side next the claimants of neighboring lands, but on the contrary to leave out a considerable portion of land, included in the said juridical possession, on the side next such claimants; this being done to avoid all dispute respecting boundaries; all of which is shown by the plot submitted herewith marked "H."

That the said tract of land has not been surveyed by the Surveyor-General of the United States, but that it was duly surveyed, and its boundaries marked in the year 1848, as aforesaid; that these boundaries are well known, and that the land within them has been in the possession of, and occupied by, the said Castillero, his agents, and those holding under him, since the year 1845 by juridical authority, and since the month of May 1846, by virtue of a title in fee.

That the rights acquired under said denouncement and juridical possession have continued uninterrupted until the present time, and now are vested solely and wholly in the petitioner, Castillero, and those holding under him; that by the working of the mine from its denouncement as aforesaid, he acquired by the laws of Mexico a perfect title to the minerals of said mine, and a perfect right to use the said land for said mining purposes, even if he had no title in fee to

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the land itself; but he avers and has shown that such title in fee absolute was conveyed to him by the grant aforesaid on the 20th day of May, 1846.

That since the petitioner took possession of said mine and tract of land in the year 1845, and more particularly since he received the said grant in fee in the month of May 1846, he and his associates holding under him have expended immense sums of money in working said mine and in improving said land, in constructing roads, opening quarries, erecting lime kilns, furnaces, smelting works, machinery storehouses, and other costly works of permanent utility, viz: from December, 1845, to the first day of May, 1852, the sum of $978,114,$\frac{11}{100}$.

And the petitioner relies for confirmation of title upon the original documents, copies of which are transmitted herewith; and upon such other and further proofs as they may be advised are necessary.

Wherefore the said Castillero prays this Honorable Board of Commissioners to confirm to him the aforesaid tract of two square leagues of land, as embraced in his mining possession and grant as aforesaid, and described in the accompanying surveys and maps

By his attorneys,
HALLECK PEACHY & BILLINGS

Filed in office Sept. 30, 1852.

GEO FISHER, Sec.

DEPOSITION OF F. ALDEN.

San Francisco, April 5th, 1853.

On this day before Comr H. I. Thornton, came Fernando Alden, a witness on the part of the claimant A. Castillero, petition No. 366, and was duly sworn, his evidence being given in English.

In answer to enquiries propounded by counsel for the claimant, the witness testified as follows:

My name is Fernando Alden, my age is 49 years. I first came to San Francisco 21 years ago the 1st day of this month: I have lived in Mexico and California 25 years. I first went to live on the lands of New Almaden about the 1st day of April, 1847, and continued to reside there until about a year ago. I acted as the agent and overseer for the Company who held under the present claimant, Andres

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Castillero, but I never have and do not now own any interest in these lands or mine.

In the early part of 1848, the lands called New Almaden, were surveyed, by Mr. C. S. Lyman, the Surveyor of the Middle District of California; I was present and assisted in making a part of this survey. I have compared the notes of survey and map filed with this deposition, and marked Exhibit No. 1, with the original notes of survey and map made by Mr. Lyman in 1848, and find them to be exact copies of the originals made at that time. The land claimed by Castillero, and those holding under him, is marked out by the red lines on this map, and has been in their possession and occupation ever since I first went there in March or April, 1847. The boundaries are distinctly marked and well known. The tract is bounded on the west, south, and east, by public lands; on the south and south-east by the lands claimed by the heirs of José R. Berreyesa. His widow, Maria E. Berreyesa, and several of his children, (of whom I particularly remember his sons Fernando Berreyesa, Nemesio Berreyesa, José Encarnacion Berreyesa, and his son-in-law Lorenzo Pineda) were present when this survey was made, and pointed out and assisted in establishing the boundaries between the lands of New Almaden and the lands of the Rancho of San Vicente, claimed and occupied by the Berreyesas, and they assented to the boundaries described in the aforesaid survey and map as the dividing lines between their lands and the lands of New Almaden.

The Quicksilver Mine of New Almaden is situate nearly in the centre of the tract represented in the aforesaid survey and map. When I first went upon this land as an agent, in March or April, A. D. 1847, the mine had been worked by Castillero to a considerable extent, and some small buildings erected; the works were then commenced on a larger scale, and have been continued ever since to the present time. The amount of money expended in these works, the erection of buildings, furnaces and store-houses, and in the construction of roads, bridges, &c., has, to the best of my knowledge and belief, been about one million of dollars. A portion of the land has been and now is occupied by the works, furnaces and buildings of the claimants, and the other portions as pastures for the animals used on these works, and for cutting fuel for the furnaces; the land embraced in this claim is all very rough and mountainous, and is only useful as woodland and as pasture, not being suitable for cultivation. I was in Mexico in 1846, and left there to take up my residence at New Almaden, in January, 1847.

When I was in Mexico in 1846, I heard of this grant by the Mexican Government of two leagues to Andres Castillero, and I was employed by the agent and partner of Castillero—Alexander Forbes—to

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come to California for the purpose of working the mine, erecting works and buildings, and occupying the land so granted to Castillero.

The aforesaid survey and map were made to mark out the land so granted, and to the best of my knowledge and belief do so represent it. I am a surveyor, and in early life was employed by Benjamin Wright, the celebrated Engineer, in surveying the Erie Canal, in the State of New York, and have been frequently engaged in surveying since that time. I am a native of Oneida County, in the State of New York.

The mining possession upon which this grant of two square leagues was made by the Mexican Government, was 3000 varas in every direction from the mouth of the mine, and this survey was made so as to locate the two leagues granted to Castillero, as nearly over this mining possession as could be done without interfering with lands claimed by the Berreyesas. The dividing line between this survey and the Berreyesas, was that fixed and claimed by the Berreyesas themselves. Mr. Lyman, the Surveyor, removed from this State several years ago, and I am informed resides in the State of Connecticut.

QUESTIONS BY U. S. LAW AGENT.

1st.—What do you mean by laying out the two leagues on the mineral possession?

Answer.—I mean that the grant described the land as "Sobre el terreno de su possession mineria," and that the two leagues were marked out as nearly on this mineral possession as it could be, and not conflict with the lines of private claims. Taking the mineral possession as three thousand varas each way in the direction of the four winds from the mouth of the mine, and forming a square, it would include a strip claimed by the Berreyesas.

The survey was therefore made to follow the lines of the Berreyesas' claim, as established by themselves, and the two leagues laid out as nearly on this square as it could be, by taking the highest points of the mountains as landmarks, and following the lines pointed out by the Berreyesas as their boundaries. This is shown by the plot filed herewith as Exhibit No. 2, and by comparing it with Exhibit No. 1.

QUESTIONS BY CLAIMANT'S COUNSEL.

1.—Examine paper marked Exhibit No. 3, and filed herewith, and say if it is, to the best of your recollection, a correct copy of the grant referred to in your answer to the foregoing question; and if the survey you speak of was made to represent the land described in this grant.

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Answer.—I have compared this copy with original grant to which I referred, and find it a correct copy; the survey was made to mark out the land described in the grant.

2nd Question.—Was the agent of the grantee satisfied with this survey, and were the colindantes or bordering owners satisfied with this survey?

Answer.—The agent of Castillero was satisfied with this survey. The Berreyesas, as I have already said, assented to it, and assisted in marking the lines, and no others to my knowledge made any objection to it.

FERNANDO ALDEN.

U. S. Law Agent present.

Sworn to and subscribed before me, this 5th of April, 1853.

HARRY I. THORNTON,
Comr.

Filed in Office, April 5th, 1853.

GEO. FISHER, Sec.

DEPOSITION OF CHESTER S. LYMAN.

UNITED STATES LAND COMMISSION,
San Francisco, Feb'y 18, 1854.

On this day before Commissioner Alpheus Felch, came Chester S. Lyman, a witness in behalf of the claimant, Andres Castillero, case No. 366, who after being duly sworn, deposed as follows:

QUESTIONS BY MR. PEACHY, ATTORNEY FOR CLAIMANT.

1st Question.—What is your name, age, and place of residence?

Answer.—My name is Chester S. Lyman, my age is forty years, and I reside in New Haven, in the State of Connecticut.

2nd Question.—Did you ever make a survey of the land lying around the Almaden Mine, in Santa Clara County, in the State of California; if so, state when and at whose request you made it, and in what manner the survey was made?

Answer.—I made such survey in the month of February, 1848, at the request of James Alexander Forbes, of California, and Alexander Forbes, of Tepic, in Mexico, who was at that time at said mines.

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At the time the survey was made I held a commission from General Mason, who was then Governor of California, as Surveyor for the Middle Department of California, which embraced what is now Santa Clara County. I was requested to lay out two square leagues of land, and was shown either a grant or a copy of a grant from the Mexican Government for those two square leagues. These were to be laid out so as to cover certain mining rights called "*pertenencia*," which extended three thousand varas in each direction from the mouth of the mine. I made the survey by triangulation, and it was so made as to include two square leagues in a somewhat irregular shape, approximating a rectangle, and it was so surveyed as to have the mouth of the mine as near in the centre as could be without covering land of the neighboring ranchos claimed by individual owners.

If there had been no surrounding claims, it would have been laid out with the mouth of the mine in the centre.

The survey includes the pertenencia of three thousand varas in each direction from the mouth of the mine, excepting on the north side. On that side, the line was placed by me where it is on account of the claim of the land by Grove C. Cook, and by the family of Berreyesa.

The Rancho claimed by Cook is called the Justo Larios Rancho, and that claimed by the Berreyesa family is called San Vicente. The line as actually run by me on the portion adjoining San Vicente, was one which was agreed upon at the time of compromise between said Forbes and the Berreyesa family. I was at the same time when this survey was being made, requested by the widow Berreyesa to make a survey of the Rancho San Vicente. I made, in fact, both surveys at the same time, and one of her sons went with me and pointed out the boundaries which they claimed.

The line above mentioned as agreed upon, was made the boundary between the two.

3d Question.—Look on the document now presented to you, being a map and description of boundaries marked "Exhibit No. 1" to the Deposition of Fernando Alden taken in No. 366. H. I. T.", heretofore filed in this case, and state whether you recognise the same as accurate copies of the field notes and map of the survey made by you as above mentioned?

Answer.—I have examined. They appear to be accurate copies of the originals. The map appears to me to be a perfect fac-simile in all its details.

4th Question.—Please state what improvements were on the land when you made the survey of it.

Answer.—There were works on it for extracting quicksilver, embracing four furnaces, and there were between twenty and thirty men

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at work on it. The miners were Mexicans; the other hands at work were principally Americans.

There was a storehouse of considerable extent, where the quicksilver and some goods were kept.

There were four or five lodging and boarding houses. The principal house was occupied by Mr. Forbes for an office and lodging places. There were also other improvements there, but I cannot now specify them.

QUESTIONS BY MR. MCKUNE, LAW AGENT.

1st Question.—Who did you understand was working the mines at the time you made the survey?

Answer.—Alexander Forbes.

(The Law Agent objects to the foregoing deposition being read and considered as evidence on the grounds, 1. That C. S. Lyman was not a Government Surveyor, and not authorized to make the survey. 2. The survey was not made until after the said land became American Territory. 3. The commission spoken of in the deposition is the only evidence of such commission.)

CHESTER S. LYMAN.

Subscribed and sworn to before me, this 18th day of February, 1854.

ALPHEUS FELCH,
Commis'r.

Filed in Office, Feb'y 18, 1854.

GEO. FISHER, Sec.

AFFIDAVIT.

UNITED STATES OF AMERICA, } SS.
STATE OF CALIFORNIA, }

San Francisco, October 23d, 1854.

This day came before Peter Lott, Commissioner for taking testimony, to be used before the Board of U. S. Land Commissioners in said State.

I, William E. Barron, on oath, state as follows: That I am the sole

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attorney and agent in California of Andres Castillero, the owner and claimant in this case of the lands of New Almaden ; that as such agent and attorney I have the entire management and control of the business relating to said lands, and the mine situated therein, and of the prosecution of this claim before this Honorable Board ; that I have made every exertion to procure from the City of Mexico duly certified copies from the archives of the Government, of the papers relating to, and constituting the title of Andres Castillero to the said lands of New Almaden ; that I have received, at different times, two or three copies of said papers from the archives of the Government, but not verified by the Great Seal of State, but was informed by counsel that such copies were not so proved and authenticated as to be entitled to be used and read as evidence in the courts of the United States.

That on the 16th day of last March, Henry W. Halleck, one of the claimants attorneys in this case, left the city of San Francisco, with the intention of proceeding to the city of Mexico, about the business of procuring testimony to prove the genuineness of the signatures to the title papers mentioned and referred to in the petition, but was unable to reach the city of Mexico, owing to the civil war then prevailing between General Alvarez and Santa Anna.

That since the attempt of Mr. Halleck to reach the city of Mexico, the civil war has continued to prevail, cutting off all communication between the capitol and Acapulco, the only port on the Pacific with which there is a mail communication to San Francisco, so that deponent could communicate by mail with his principal only by Havana and New Orleans.

Affiant further says, that he has used all possible diligence to procure a duly authenticated copy of said documents from the archives of the Departments of Mexico, verified by the great seal of State, but that they have been sent to him verified by the keeper of the archives and the minister, but without the great seal—that being, as he understands, the manner of verifying documents to be used in the Courts of Mexico, and he is informed that in the Mexican Republic there is no seal used corresponding with what is used in other nations, and known as their great seals ; and that for that reason he cannot procure copies of said documents so certified and authenticated as, under the advice of counsel, to be safely depended on as competent documentary proof in the trial of this case.

Affiant further says, that he has recently communicated with the claimant in Mexico, both by way of Havana and by a sailing vessel going to San Blas, and has advised the claimant to procure the attendance before this Board of a competent witness or witnesses acquainted with the signatures of the public officers in Mexico, and who shall

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have compared the copies of said original documents with the original documents themselves on file in the public archives, and affiant believes that such witness or witnesses will be in attendance on this Board as soon as practicable.

Affiant further says, that he does not know of any person in this State who can prove the signatures to the papers offered as claimant's title in this case.

Affiant further says, that the failure to procure the proper authentication of the papers or witnesses to prove them, has not resulted from a desire to delay a decision in this case, but from the mode of verifying papers in Mexico, and from the difficulty of communicating with the claimant, who, he has every reason to believe, is very desirous of having an early decision of this Honorable Board on his claim.

WM. E. BARRON.

Subscribed and sworn to before me, on this 23d day of October, A. D. 1854.

PETER LOTT,
Comm'r, &c.

Filed in office, Oct. 23, 1854.

GEO. FISHER, Sec.

DEPOSITION OF JOSÉ MARIA LAFRAGUA.

UNITED STATES OF AMERICA, } SS.
STATE OF CALIFORNIA, }

San Francisco, January 29, 1855.

This day came before Peter Lott, Commissioner for taking testimony to be used before Board of U. S. Land Commissioners in said State, José Maria LaFragua, a witness in behalf of the claimant, Andres Castillero, in case No. 366, on the docket of said Board, and said witness being sworn, deposed in Spanish, which was interpreted by the interpreter to said Board as follows:

The U. S. Associate Law Agent is present, and Judge Thornton, as Associate Counsel.

QUESTIONS BY MR. PEACHY FOR CLAIMANT.

1st Question.—What is your name, age and residence?

Answer.—My name is José Maria Lafragua, my age 41 years, my residence in the city of Mexico.

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2nd Question.—Please to state what is your profession, and what public offices you have held.

Answer.—I am a lawyer by profession, and have held the office of *Ministro de Relaciones Interiores y Esteriores de Mexico*, in the latter part of the year 1846. From 1848 to 1852 I was a Senator of the Republic of Mexico, and I have been several times a deputy in the Mexican Congress.

3d Question.—Look at the document now shown to you, marked "A. P. L.," as an Exhibit to this deposition, and state whether you have compared the writings therein contained with the originals in the archives in Mexico; whether the same are accurate copies of said originals; whether the originals are in the offices where they purport to be; whether you know any or all the signatures attached to said originals; what are your means of knowing said signatures; and are the same genuine?

Answer.—I have compared all the papers in this document with the originals in the city of Mexico in November, 1854, and found them all to be correct copies. The said originals are in the archives of the *Junta de Mineria* and in those of the *Ministerio de Relaciones*.

In 1846, the business of the Government relating to mines was conducted in the department of Government called *Ministerio de Justicia*, and now it is in the department of the *Ministerio de Relaciones Esteriores*, and the documents are properly in the latter department.

I know the signatures of all the persons whose names appear signed in said original papers in said archives.

I have seen them all write, and been familiar with their signatures in many public documents, and in these I believe them all to be genuine.

4th Question.—Are you acquainted with the course of business in the Departments of the Government of Mexico; if yea, state whether copies of documents which are transmitted from one Department of the State to the other are preserved in the office from which they emanate, or whether minutes of the same are there kept?

Answer.—I am acquainted with the course of business in the offices of the Government of Mexico, and in each of the offices of State are kept copies of all papers originating in or emanating from that office; when papers are transmitted from that office to another office or Department of State, these copies remaining are called *Minutas*.

When the Minister of a Department writes a despatch or official letter, the original or rough draft, called *borrador*, is filed in the office, and constitutes the *minuta* of that transaction.

5th Question.—Look at the communication which was made by the Junta de Mineria, or by its president, Vicente Segura, on the 14th

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of May, 1846, to the Minister of Justice and Public Instruction, enclosing the petition of Andres Castillero to said Junta de Mineria, dated May 12th, 1846, and state whether you have ever seen said communication in the office of the Minister of Justice and Instruction aforesaid, and if it contains any minute made on it by the Minister of Justice; if yea, whether you have made a copy of that minute, and can produce it.

Answer.—I have seen the original communication made by said Junta, enclosing said petition of Castillero, of which a copy appears here in the document exhibited "A., P. L." I saw it in the office of the Minister of Foreign Relations, to which the mining business had been transferred, as I before said.

When I saw the said papers, in November, 1854, I saw on the margin of said communication, a decree bearing the rubric of the Minister of Justice, which does not appear in the copies here presented, but which I then copied, and the true copy I then made I now produce to be filed herewith, marked "B., P. L." as an Exhibit to this deposition.

The reason why said marginal writing does not appear in this copy "A., P. L." is because it was merely a minute of the document or memorandum of the decree.

6th Question.—Look at the document now shown to you marked "C., P. L." as an exhibit to this deposition and state whether you are acquainted with the hand writing of Castillo Lanzas; if yea, by what means you are acquainted with it, and state whether his signature in said document is genuine, and also what office said Lanzas held at the date of said document.

Answer.—I know said Lanzas' hand writing. I have seen him write and have seen various communications from him, and this is his genuine signature in this document. He was Minister of Foreign Relations on May 23d, 1846, the date of said document.

7th Question.—While you held any official position under the Mexican Government, was any communication ever addressed to you, relating to the mine of New Almaden in Upper California; if yea, what action did you take on said communication?

Answer.—While I was Minister of Interior and Exterior Relations in November 1846, I received a communication from the Junta de Mineria, relating to said mine. I, as Minister aforesaid, reported said communication to the Constituent Congress and recommended it in a memorial of December of the same year.

8th Question.—Have you in your possession the report you made on that occasion? if yea, please to produce it.

Answer.—I have so much of my report as relates to this matter

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and produce it here marked " D., P. L." as an Exhibit to this deposition.

This Exhibit is in printed form.

The paragraphs marked with a pen on pages 65 and 66, embrace what I said about the matter in my report.

The written note on page 118 relates to the document marked " Num 52."

The two documents marked with a pen in the margin of page 136 relate to the subject of said Castillero's mine.

The marked paragraphs, partly marked with lead and partly with ink, on page 146, relate to the same matter.

I made these marginal marks and annotations myself, to show what portions of the Document relate to this particular subject.

This document is taken out of a large bound Volume which embraced my whole report as Minister of Relations, upon all subjects pertaining to my office, with accompanying documents. I took this portion for convenience, because it embraced everything which my said report contained relating to said Almaden mine or Castillero's connection therewith.

The book I speak of is a ponderous volume.

9th Question.—Who was president in Mexico when this grant " C., P. L." was made?

Answer.—General Paredes was President of the Republic from January to July of the year 1846.

10th Question.—State what were the powers of Paredes as President—Were they Constitutional or not?

Answer.—His powers were not Constitutional, they were Extraordinary. The Organic Bases of 1843 had been suppressed by revolution and there was no Constitution during the sway of Paredes. In August 1846, the Federal Constitution of 1824 was re-established, and Gen Salas came into power by another revolution.

11th Question.—Had Paredes the power to grant vacant lands in the Territories, by virtue of his Extraordinary powers as President, or by the Colonization Law of 18th August 1824?

Answer.—In my opinion Paredes had the power to grant such lands under and by virtue of the laws of August 16th 1824, because in the 16th article of that law the President was authorized to adopt measures, and arrange the affairs of Colonization in the Territories.

In consequence of the Revolution, Paredes became clothed with absolute power embracing the Legislative as well as the Executive, and all other functions of the Government.

12th Question.—Was it customary for the President of Mexico himself to sign documents, or was it done by the proper Secretary?

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Answer.—It would depend upon the character of the document. Commissions, Laws of the Republic and appointments were signed by the President. Communications to the Governors of Departments and to other high functionaries were signed by the Ministers, and not by the President.

The President did not sign grants of the public lands because those matters were communicated to the Governors of the Departments.

13th Question.—In what light do regard this document "C., P. L."

Answer.—It is a communication from the Minister of Relations to the Governor of California It is substantially the approval by the President through the Minister, of the petition of Castillero, and it contains a grant of the land or rather the consent of the President that the land should be granted. And I therefore consider it a title to the land.

(13th Question and answer objected to by the U. S. Associate Law Agent.)

CROSS-EXAMINED BY U. S. ASSOCIATE LAW AGENT.

1st Question.—Have you any interest by way of commission or otherwise, depending in any manner upon the confirmation of this claim by the Board of U. S. Land Commissioners?

Answer.—I have no interest of any kind in the matter.

2nd Question.—Is said Andres Castillero still living; if yea, where; and what is his profession?

Answer.—He is living. He has a hacienda about 4 leagues from the City of Mexico, on which he resides.

3rd Question.—Has said Castillero recently held any Civil or Military office in Mexico?

Answer.—I do not know that he holds any office at present, nor do I know of his having held any recently. I think he was a deputy in the Mexican Congress along about 1846. It was before 1846.

4th Question.—Do you know whether said Castillero ever returned to Upper California after May 23, 1846?

Answer.—I do not know whether he did or not.

5th Question.—Have you compared *verbatim* the papers "A., P. L" with the originals of which they purport to be copies; and when did you last see said originals?

Answer.—I have compared them verbatim. The last time I saw the originals was when I compared them, which was between the 11th and 15th days of November, 1854.

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6th Question.—Did you ever see said originals prior to that time?

Answer.—I saw them in 1846, because I was then Minister and was obliged to examine all the acts of Paredes for the purpose of laying them before the Mexican Congress.

7th Question.—Was the minister of which you have spoken "B., P. L" on the document in the Archives when you first saw it?

Answer.—Yes, it was there written when I first saw said document in 1846.

8th Question.—Do you know of any grant of land in Upper California having been made by the General Government of Mexico since the enactment of the Colonization law of 1824?

Answer.—I do not.

9th Question.—Does the Supreme Government of Mexico ever grant the fee simple title in mines, or were they not denounced under the mining laws?

Answer.—A title to a mine could not be obtained without the denouncement by the applicant under the mining laws. So long as the requirements of the mining laws were complied with the applicant for a title could hold and enjoy a full and complete title in the mine forever, according to the ordinances.

When I say his title was forever, I mean so long as he complied with the mining laws.

(9th question and answer both objected to as relating to written laws, and incompetent to prove them in this way.)

10th Question.—Were not continued occupation and possession, as well as the payment of the usual stipend, required by law?

(10th Question same objection as to 9th.)

Answer.—At this moment I do not remember the provisions of the mining law.

11th Question—Does this minute or memorandum "B., P. L." bear any date in the original, of the time when it was written?

Answer.—It has the date of May 20th, 1846, in the original in the Archives, which I understood to be the time when said marginal decree was entered; the inverted commas or quotation mark in this copy are my own and do not appear in the original.

12th Question.—What action did the Mexican Congress take upon your report, or upon the part thereof relating to this matter of Castillero?

Answer.—The Congress took no action upon it.

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13th Question.—Were the actions of Paredes as President ever recognized or approved by the Mexican Congress?

Answer.—Some of his acts have been approved and some disapproved, as Congress thought proper, and his acts until they were disapproved were recognized as valid.

14th Question.—Was it not required that his acts should be submitted to Congress before they could acquire validity?

Answer.—No, it was not necessary. There was no express provision to that effect in the plan which the Government established.

That was the plan of San Luis Potosi, of the latter part of 1845.

Instead of saying there was no express provision &c., I would wish to say, I do not remember of any express provision to that effect.

I therefore repeat that all the acts of Paredes were deemed valid till expressly annulled or disapproved by the Government.

15th Question.—Was it not usual for officers acting under extraordinary powers, to sign the acts done by themselves?

Answer.—No; the President only signed usually such documents as I have before discriminated, even when invested with Extraordinary powers.

16th Question.—Was not the Geary Grant of lands on the Isthmus of Tehuantepec, made under extraordinary powers, and was it not signed by the President?

Answer.—I do not know whether the President signed that Grant or not.

17th Question.—You have expressed in your examination in-chief the opinion that Paredes had the power to grant lands under the Colonization law of August 1824, because by the 16th Article of that law, the President was authorized to adopt measures of Colonization—Did Paredes ever promulgate any regulations for the colonizations of lands in the territories under said 16th Article?

Answer.—I do not remember of his issuing any such regulations.

18th Qnestion.—Do yon know of Paredes ever having made any change or departure from the ordinance of November 1828, carrying out the decree of August 1824?

Answer.—I do not know of Paredes ever having made any change or departure, such as the question suggests.

19th Question.—Was not the document "C., P. L." a recommendation to the Governor of California in favor of Castillero, to make him a grant according to the laws and dispositions regulating colonization in the territory of Upper California?

Answer.—It is not a recommendation. It is an order given to the Governor of California by the Supreme Government of Mexico to give Castillero the possession of the sitios mentioned in the documents which had been granted to him (Castillero) on the 20th May, 1846.

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20th Question.—Look at the 8th proposition in the petition of Castillero in "A., P. L" which is referred to in "C., P. L." and state whether said proposition was not to have granted to him two square leagues as a colonist, and agreeably to the Colonization Laws.

Answer.—My opinion is that the two sitios were to be granted to the petitioner for the benefit of the wood on the land; my individual opinion is, the grant was made to encourage the developement of the mine.

RE-EXAMINED BY CLAIMANTS' COUNSEL.

1st Question.—Look at the document signed by Isidro R. Gondra in "A., P. L" near the end of said Exhibit, and state whether you know said Gondra's handwriting; if yea, your means of knowledge, and whether his signature thereto is genuine.

Answer.—I know said Gondra's handwriting; I have seen him write, and this is his genuine signature.

(This first question objected to by the U. S. Law Agent as incompetent to prove what the document states.)

J. M. LAFRAGUA.

Subscribed and sworn to before me this 30th day of January, A. D. 1855.

PETER LOTT,
Commissioner.

Filed in Office Jan'y 30, 1855.

GEO. FISHER, Sec.

DEPOSITION OF JOSÉ NORIEGA.

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA, } SS.

San Francisco, March 19, 1855.

This day came before me, Peter Lott, Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, José Noriega a witness, on behalf of the claimant Andres Castillero in case No 366, on the docket of said Board, and said wit-

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ness being sworn deposed in Spanish, which was interpreted by the interpreter to said Board, as follows:

The U. S. Law Agent is present.

QUESTIONS BY MR. PEACHY FOR CLAIMANT.

1st Question.—What is your name, age and residence?

Answer.—My name is José Noriega—my age 55 years, my residence in San José, Santa Clara County, California.

2nd Question.—Examine the Document entitled "Posesion de la Mina de Sta Clara—Ano de 1845" the same which has just been exhibited to Frank Lewis, the Deputy Recorder, who has just testified in this case, and also to Antonio Suñol, and state whether you are acquainted with the signature of Andres Castillero, and your means of knowledge, and also whether the petitions of said Castillero in said documents dated respectively November 22d, 1845, and December 3d, 1845, both made to the "Señor Alcalde de 1° Nominacion del Pueblo de San José Guadalupe"—making known the discovery of a mine containing gold, silver, and quicksilver, and signed by the genuine signatures respectively of said Castillero.

Answer.—I am acquainted with said Castillero's signature; I have often seen him write, and I believe these both to be his genuine signatures.

3d Question.—Look at the next writing in said document, purporting to be a record of the action of the Alcalde on the above named petition, whereby he gave Juridical possession to the said Andres Castillero of 3000 varas of land in all directions around the mine, dated December 1845, signed Antonio Maria Pico, and by the assisting witnesses, Antonio Suñol and José Noriega, and state whether said signatures are genuine and whether you was one of the witnesses, and whether said document is genuine and made at the time it bears date.

Answer.—I know the signatures of said Pico and Suñol, and I saw them sign this document, and I was one of the assisting witnesses and signed my name here, and the document was made and executed at the time it bears date and is a genuine document.

4th Question.—State whether or not you know of Andres Castillero working said Quicksilver mine before the Americans took possession of the country; if yea, how long did he work it, and if he took out Quicksilver how much he got?

Answer.—I know he worked said mine before the Americans took the country. I do not know how long he worked, but I know he had

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at my house one *arroba* (25 pounds) of Quicksilver, which he gave to me. I saw a great deal which he got out, he had a great many jars full but I cannot say how much there was.

CROSS-EXAMINED BY U. S. LAW AGENT.

1st Question.—How do you know said Castillero worked the mine, and state to what extent was it worked by him?

Answer.—I saw him working the mine; he had some eight or ten hands at work there, and he had gone ten or twelve varas deep with the work.

That was in December 1845 He had then just commenced the work.

2nd Question.—Did you ever see it again before the Americans came in July 1846?

Answer.—I saw it two or three times in that interval.

3d Question.—Was the mine on private or public lands?

Answer.—It was the property of José Reyes Berreyesa.

3d Question objected to as irrelevant and incompetent.

JOSÉ NORIEGA.

Subscribed and sworn to before me on this 19th day of March A. D. 1855

PETER LOTT,
Commissioner.

Filed in Office March 19, 1855

GEO. FISHER, Sec.

DEPOSITION OF ANTONIO SUÑOL.

UNITED STATES OF AMERICA, } SS.
STATE OF CALIFORNIA. }

San Francisco March 19, 1855

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of U. S. Land Commission in said State, Antonio Suñol a witness on behalf of the claimant Andres Castillero in case No. 366, on the Docket of said Board, and said witness being

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sworn deposed in Spanish, which was interpreted by the interpreter to said Board as follows:

The U. S. Law Agent is present.

QUESTIONS BY MR PEACHY FOR CLAIMANT.

1st Question.—What is your name, age and residence?

Answer.—My name is Antonio Suñol, my age 57 years, my residence at the Pueblo of San José, Santa Clara County, California.

2nd Question.—Examine the document entitled "Posesion de la Mina de Sta Clara,—Ano de 1845" the same which has just been exhibited to Frank Lewis, who has now given his deposition in this case, and state whether you are acquainted with the signatures of Andres Castillero, and your means of knowledge, and whether the petitions of said Castillero in said document, dated respectively November 22d, 1845 and December 3d, 1845 both made to the "Senor Alcalde de 1ª Nominacion del Pueblo de San José Guadalupe" making known the discovery of a mine containing gold, silver, and quicksilver, are written in a handwriting with which you are acquainted, and whether they are signed by the genuine signature respectively of said Castillero.

Answer.—I am acquainted with the signature of said Andres Castillro. I have seen him write, and these his signatures to these two petitions are his genuine signatures.

The first in order as they stand in said document, and as referred to in this interrogatory, is written (the body of it) in the handwriting of one Gutierrez, whom I have seen write, he was a teacher of children in my house, and the second petition, although appearing to be in different hand, I think may also have been written by him, for he varied his hand very much in consequence of his sometimes drinking too much.

3d Question.—Look at the next writing in said document, purporting to be a record of the action of the Alcalde on the above named petitions, whereby he gave Juridical possession to the said Andres Castillero of 3000 varas of land in all directions around the mine, dated December 1845, signed Antonio Maria Pico and by the assisting witnesses Antonio Suñol and José Noriega, and state whether the said signatures are genuine, and if yea, how you know it, and whether you were one of said assisting witnesses, and whether said document is genuine and was made at the time it purports to have been made.

Answer.—I know the signatures of said Pico and Noriega I have

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often seen them write and these are their genuine signatures, and I was one of said witnesses, and this is my own signature.

The document is genuine, and was made at the time it bears date.

4th Question.—Examine now the paper marked "A., P. L." purporting to contain a copy of the documents of which you have been testifying, to wit; the said two petitions, and the action of the Alcalde thereon, and state whether it is a true copy of said original papers and how you know it.

Answer.—This is a true copy of said original document. I have just now compared it carefully with Mr. Lewis, the Deputy Recorder, who has just been testifying in this case, and also with José Noriega who looked over at the same time, while we were comparing said copy "A., P. L" with said original in said Lewis' custody.

5th Question —Was there ever to your recollection in the Department of Upper California a mining deputation (diputacion de mineria) or special court or body of men having jurisdiction in matters relating to the discovery and denouncement of mines and other things appertaining thereto?

Answer.—No, I never knew of any such deputation or special tribunal. If there had been such I think I should have known it. I have lived 38 years in San José, and was four or five years Sub-Prefect there, and never knew of any such special court or deputation.

6th Question.—State whether or not you know of Andres Castillero working said quicksilver mine before the Americans took possession of the Country in July 1846; if yea, how long did he work it and how much quicksilver he got out of it?

Answer.—I knew of said Castillero working said mine before the event and time mentioned, and I know that he took out a great quantity of quicksilver. I was there and saw him working the mine, and he had about 60 or 70 Quintals (each Quintal is 100 pounds) of quicksilver which I saw at one time.

7th Question.—Has the mine been worked since the time the Americans took possession?

Answer.—Yes, it has been worked all the time since, or at least I do not know of any interruption of the work since that time.

8th Question.—What was the name of the mine when it was first denounced, and what is it's present name?

Answer.—It used to be called the mine of Santa Clara, but of late years it has been called the mine of Nuevo Almaden, since they got such a quantity of quicksilver from it.

They gave it this name from a celebrated mine in Spain.

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CROSS-EXAMINED BY U. S. LAW AGENT.

1 Question.—When did you first know Castillero to work the mine; how often since have you known it worked, and to what extent?

Answer.—I first knew him to work it about November 1845. I have often seen it worked since that time: perhaps fifty times. I cannot say exactly, but I have seen it a great many times.

2nd Question.—State if you know when said Castillero left California for Mexico, and whether he ever returned.

Answer.—The last time he left for Mexico was in 1846, and I do not know of his having returned.

ANTONIO SUÑOL.

Subscribed and sworn to before me on this 19th day of March 1855

PETER LOTT,
Commissioner.

Filed in Office March 19, 1855

GEO. FISHER, Secy.

DEPOSITION OF FRANK LEWIS.

UNITED STATES OF AMERICA, } SS.
STATE OF CALIFORNIA. }

San Francisco, March 19, 1855.

This day came before Peter Lott, Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Frank Lewis, a witness on behalf of the Claimant, Andres Castillero, in Case No 366, on the Docket of said Board, and said witness being sworn, testified as follows:

The U. S. Law Agent is present.

QUESTIONS BY MR. PEACHY FOR CLAIMANT.

1st Question.—What is your name, age and residence?

Answer.—My name is Frank Lewis, my age about 27 years, my residence in San José, Santa Clara County, California.

2nd Question.—State what office you hold in California and how long you have held the same.

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Answer.—I am Deputy County Recorder of Santa Clara County. I was appointed about the 15th of August 1855, and have been in that position ever since till the present time.

3d Question.—Look at the paper now shown to you entitled "Possesion de la Mina de Sta Clara, Ano de 1845;" state where you obtained and why you produced it before this Commission?

Answer.—I obtained it from among the papers filed in the County Recorder's Office of Santa Clara County, and I produced it here in obedience to a subpœna *duces tecum*, which was served on Solomon A. Clark, as County Recorder of said County, a few days since by a U. S. Deputy Marshal. Mr. Clark sent me as his Deputy here with the papers.

4th Question.—Can you allow me, as counsel for the Claimants in this case, to keep this paper and file it in the Archives of this commission in this claim?

Answer.—No. I do not consider myself authorised to part with the custody of the document, but feel bound in duty to return it to the Recorder's Office of Santa Clara County.

5th Question—Examine now the paper marked "A., P. L" purporting to be a copy of the petitions and action thereon in the document of which you have been testifying, and state whether it is a true and exact copy of said original papers and how you know it.

Answer.—It is a true and exact copy. I know it from having carefully compared it at the present time I have the original and copy both now before me.

FRANK LEWIS.

Subscribed and sworn to before me on this 19th day of March A. D. 1855

PETER LOTT,
Commissioner.

Filed in Office March 19, 1855

GEO. FISHER, Secy.

DEPOSITION OF DOMINGO DANGLADA.

UNITED STATES LAND COMMISSION,
San Francisco March 21, 1855.

On this day, before Commissioner Alpheus Felch, came Domingo

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Danglada, a witness on behalf of the Claimant in Case No 366, who after being duly sworn deposed as follows :

QUESTIONS BY MR PEACHY, ATTORNEY FOR THE CLAIMANT.

1 Question.—Please state your name, age, and place of residence.

Answer.—My name is Domingo Danglada, my age forty eight years, and I reside in San Francisco, California.

2 Question.—When and how long did you live in Mexico, and in what business were you then engaged ?

Answer.—I lived in Mexico twenty three years, and was engaged in mercantile business. I was there twenty two years previous to 1849, when I came to California.

3rd Question.—Was you ever engaged in mining business in Mexico, or ever have any interest there in mines ? Are you familiar with the mode of registering the discovery of new mines or of denouncing old ones ? If yea, state before what officers the said proceedings were had. What was the general usage and custom in regard to the officers who took jurisdiction in those matters, and specify if you can some particular cases in which registers and denouncements were made ?

(Mr. Blanding objects to the 3rd Question and Answer. A. F.)

Answer.—I was engaged there in copper mines, mixed with gold, in the State of Sonora. I am familiar with the mode of registering and denouncing mines. The proceedings are before the Judge of the First Instance or in his absence before the Alcalde.

I have known several instances of such proceedings in Sonora and the States of Mexico. I know an instance in the case of the mine in which I was interested, and I have also known instances in Alamos, which is a mining district, and in Hermosillo where also there are mines.

4th Question.—Did you ever know in any of the Mexican States or Departments a tribunal or Court, or officer specially charged with mining affairs and who had jurisdiction in relation to the discovery or denouncement of mines, or of disputes concerning them between individuals, or between individuals and the Government ?

Answer.—I have never known any except the Judge of the First Instance, and in his absence or sickness the Alcalde. Formerly there were tribunals having special charge of mining affairs, but since the adoption of the Federal Constitution there have been none such.

The jurisdiction was then given to the tribunals above mentioned.

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QUESTIONS BY MR. BLANDING, ASSOCIATE LAW AGENT.

1 Question.—Do you know of any other tribunals in Mexico before whom denouncements could be made?

Answer.—I do not.

DOMº DANGLADA.

Subscribed and sworn to before me the 21st day of March 1855
ALPHEUS FELCH,
Commissioner.

Filed in Office March 21, 1855
GEO. FISHER, Secy.

DEPOSITION OF FRANCISCO DE LEON.

UNITED STATES LAND COMMISSION }
San Francisco March 21, 1855 }

On this day, before Commissioner Alpheus Felch, came Francisco de Leon, a witness on behalf of the Claimant, Andres Castillero, in Case No 366, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Interpreter for the Board :

QUESTIONS BY MR PEACHY, ATTORNEY FOR CLAIMANT.

1 Question.—Please state your name, age and place of residence.

Answer.—My name is Francisco de Leon, my age is sixty-five years, and I reside in San Francisco, California.

2 Question.—When, how long, and in what parts of the Mexican Republic have you lived? What offices have you held under the Mexican Government? Are you familiar with the mode of registering the discovery of new mines, and of denouncing old ones? If yea, state before what officers the said proceedings were had, and what was the general usage and custom in regard to the officers who exercised jurisdiction over such matters.

Answer.—I lived in the Mexican Republic all my lifetime until I came to California in 1849.

I was born in the Republic and have lived in various parts of it, but longer in Sinaloa than any other.

I have lived in Durango and in Chihuahua, which are mining dis-

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tricts. I have held several Military and Civil offices, such as Prefect, Sub-Prefect, and Judge, and was elected as member of the Legislature of Sinaloa, but did not serve in that capacity. I am acquainted with the mode of registering the discovery of new mines and denouncing old ones. The proceedings are held before the Judge of the First Instance, but where there is no such Judge it is done before the nearest Alcalde, who by law is authorized to give possession of the same. Ever since the establishment of the Mexican Republic, such proceedings have been held before the officers above named. Before the Republic was established the Tribunal of mines (Tribunal de Mineria) was established in the City of Mexico and in the mining districts there was a Deputation having special jurisdiction in the matters relating to the mines; but under the Federal Government these were abolished, and jurisdiction in the registering of the discovery and the denouncement of mines given to the Judge of the First Instance and to the Alcalde as above stated.

(Mr Blanding objects to this question and answer)

3 Question.—Answer the foregoing question particularly in reference to the mode which has prevailed in the Mexican Republic since 1836, when the Federal Government was abolished, and the New Constitution establishing the Central Government adopted.

Answer.—The same mode of proceedings prevailed after the establishment of the Central Goaernment as under the Federal, and it continued up to 1850, so far as I know.

QUESTIONS BY MR BLANDING, ASSOCIATE LAW AGENT.

1 Question.—Were you at the time of your residence in Mexico in any way interested in Mines?

Answer.—I worked one of the mines there, which cost me the loss of nearly fifty thousand dollars. I worked also some others of less importance, and I have been present at the giving possession of many mines. From 1820 to 1822 I was an enrolled miner.

2 Question.—Did you in your official capacity ever perform any act of registering the discovery of any mines?

Answer.—I never did; but I have seen possession given to others.

F. FRANCº DE LEON.

Subscribed and sworn to before me this twenty-first day of March 1855

ALPHEUS FELCH,
Commissioner.

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Filed in Office March 21, 1855

GEO. FISHER, Sec.

DEPOSITION OF JOSÉ FERNANDEZ.

UNITED STATES OF AMERICA } SS.
STATE OF CALIFORNIA }

San Francisco March 28, 1855

This day came before Peter Lott, Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, José Fernandez, a witness on behalf of the Claimant Andres Castillero, in Case No 366, on the Docket of said Board, and said witness being sworn, deposed in Spanish, which was interpreted by the Interpreter said Board as follows:

The U. S. Associate Law Agent is present.

QUESTIONS BY MR PEACHY FOR CLAIMANT.

1st Question.—What is your name, age and residence?

Answer.—My name is José Fernandez, my age 56 years, my residence near Pueblo of San José, California.

2nd Question.—When and how long have you lived in California, and in what part of it?

Answer.—I have lived in California 38 years, chiefly in Monterey and San Francisco.

3d Question.—What offices have you held in California?

Answer.—I have been second Alcalde and Justice of the Peace in the Pueblo of San José several times.

4th Question.—Was there any Judge of First Instance in or about the years 1844, 1845 and 1846, exercising Jurisdiction in the district of San José?

Answer.—There was no Judge of First Instance there in those years.

5th Question.—Was there any Judge of First Instance in those years in the Department of California, to your knowledge?

Answer.—There were none that I know of. I knew one Judge of First Instance in 1842 or 1843. It was Don José Zenon Fernandez, in Monterey.

6th Question.—Did the Jurisdiction of that Judge Fernandez extend over the Pueblo or District of San José at that time?

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Answer.—No, it did not.

7th Question.—Do you know where the mine of Almaden, or the mine of Santa Clara, as it was formerly called, is situated, being a mine situated on the land claimed in this case?

Answer.—Yes, I do.

8th Question.—Within what district, or under what jurisdiction was that mine situated in the year 1845?

Answer.—It was within the jurisdiction of the Pueblo of San José.

CROSS-EXAMINED BY U. S. ASSOCIATE LAW AGENT.

1st Question.—State accurately the line which divided the jurisdiction of Monterey from that of the Pueblo of San José.

Answer.—The jurisdiction of the Pueblo of San José extended to the Arroyo de los Llayos, about eight or nine leagues southerly from said Pueblo; then next adjoining that came the jurisdiction of San Juan Bautiste, and below that came the jurisdiction of Monterey.

2d Question.—Were these lines of jurisdiction established by any official acts or legal provisions?

Answer.—They were the established limits, by some Governmental action; but I do not know what particular act or law fixed them. I only know that they were generally known as the Lines.

JOSÉ FERNANDEZ.

Subscribed and sworn to before me, March 28th, 1855.

PETER LOTT,
Commissioner.

Filed in office, March 28th, 1855.

GEORGE FISHER, Sec'y.

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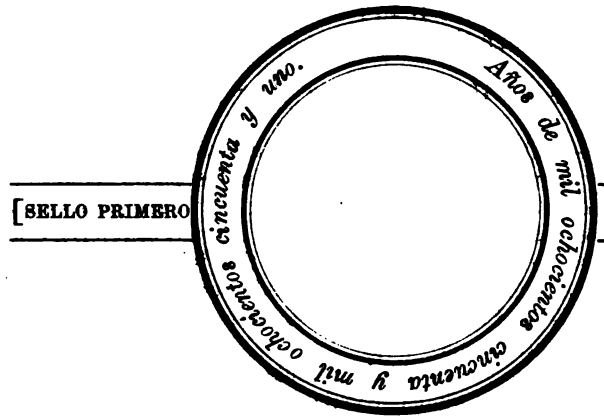
ESPEDIENTE OF APPROVAL OF MINING POSSESSION AND GRANT.

A. P. L., annexed to the Deposition of José Maria Lafragua, January 29th, 1855.



[SELLO PRIMERO OCHO PESOS.]

JUNTA DE FOMENTO Y ADMINISTRATIVA DE MINERIA,
Numero 573.

EXCELENTISIMO SEÑOR:

Habiendo presentado á esta Junta el Señor Profesor Don Tomas Ramon del Moral unas muestras de cinabrio de la Mision de Santa Clara, en la Baja California, que le remite Don Andres Castillero, asi como las adjuntas copias con el objeto de escitar al Supremo Gobierno para que se sirva auxiliar tan importante empresa, inmediatamente remitió dichas muestras al Excelentisimo Señor Director del Colegio para que se hiciesen los debidos ensayos, Su Excelencia con oficio de veinte y nueve del pasado recibido ayer le dice lo que sigue.

El Señor Don Tomas Ramon del Moral, Presidente de la Junta Facultativa del Colegio Nacional de Mineria en oficio de veinte y cuatro del pasado me dice lo que sigue.

EXCELENTISIMO SEÑOR:

Habiendose enterado la Junta Facultativa de los documentos que V. E. le pasó el veinte y uno del presente mes, relativos á un criadero de cinabrio descubierto en California por el Señor Don Andres Castillero y á otro de Carbon de piedra de la Bahia de San Francisco, tiene el honor de informar á V. E. que las muestras remitidas por dicho Señor Castillero estaban ya depositadas en el Gabinete de Mineralo-

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gia unas, y otras ensayadas por el Profesor de Quimica Don Manuel Herrera. El —

SELLO CUARTO { Años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno. } UN REAL.

—ensayo dió una ley de treinta y cinco y medio por ciento tomando para hacerlo una mescla de las diferentes muestras, por que hay algunas tan ricas que son de cinabrio puro. La Junta cree que el Señor Castillero se ha hecho digno por tan importante discubrimiento de la eficaz proteccion del Supremo Gobierno y de la Junta de Fomento de Mineria, y está persuadida, de que V. E. interpondrá todo su influjo á fin de que este individuo reciba una prueba de que el Supremo Gobierno sabe distinguir y premiar á los cuidadanos que contribuyen á la prosperidad de la patria.

Reproduzco á V. E. con este motivo las concideraciones de mi estimacion y respeto.

Y tengo el honor de trasladarlo á V. S. S. como resultado de su oficio relativo.

La Junta al incertar á V. E. la anterior comunicacion tiene el honor, de particparle que ha preguntado ya al Señor Castillero la clase de auxilios ó de proteccion de que necesita para fomento de su brillante empresa, felicitando al Supremo Gobierno por un descubrimiento que si encuentra en un principio toda la proteccion que se merece puede cambiar completamente el aspecto de nuestra Mineria, libertandola de la necesidad en que ha estado hasta ahora del azogue estrangero.

La Junta con este motivo aprovecha la oportunidad para partici-

SELLO CUARTO { Años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno. } UN REAL.

par á V. E. que como el veinte y cuatro del presente mes termina la gracia que concedió la ley de cinco pesos de premio á cada quintal de azogue extraido de las Minas Nacionales, han acreditado hasta la fecha los mineros de Guadalcazar haber esplotado mil quinientos setenta y cinco quintales, de Diciembre de ochocientos cuarenta y cuatro, á fin de Marzo proximo pasado, cuyo resultado excede del cálculo que hasta ahora se habia hecho de que la produccion de este mineral era de cien quintales mensuales.

La Junta reitera á V. E. con este motivo las protestas de su distinguida consideracion y aprecio.

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Dios y Libertad, Mexico, Mayo cinco de mil ochocientos cuarenta y seis.

VICENTE SEGURA,
Presidente.

Por ocupacion del Secretario,
YSIDRO R. GONDRA,
Oficial Primero.

Excelentisimo Señor Ministro de Justicia.

Es Copia;

Mexico, Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.
Secretaria de la Junta de Fomento de Mineria.

El Señor Don Andres Castillero comisionado por el Supremo Gobierno el año proximo pasado para pasar á Californias á desempeñar objeto del servicio publico, me dice en cartas escritas de la Mision de Santa Clara en diez y nueve, y veinte y dos de Febrero del presente año lo que sigue:

"Á distancia de cinco leguas de esta Mision al Oeste, he descubierto y denunciado una mina abundan-

SELLO CUARTO { Años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno. } UN REAL

tisima de azogue, y á confirmar mi verdad remito á V. S. unas piedras de las que se han tomado por encima de la veta; tambien va un poco de azogue del que sacamos con la mayor facilidad. El Señor Director del Colegio de Mineria Don Ramon del Moral, ha de recibir mucho gusto al ver igualadas las piedras de Almaden. Segun lo ancho de la veta y abundancia de Saca de metales dentro de un año mediante la proteccion del Gobierno Supremo, no necesitarà la Republica azogue de afuera.

Remito á V. algunas frioleras hechas por los indios del Noroeste y producidas de aqui; el Carbon de piedra es abundantisimo y se encuentra en las costas de la Bahia de San Francisco, de modo que los Buques de Vapor hechando sus embarcaciones menores, pueden cargar todo el que necesiten; este descubrimiento lo hizo el Señor Coronel Don Juan Bautista Alvarado; El cristal de roca es un cerro muy grande."

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Es Copia:

Mexico, Abril trece de mil ochocientos cuarenta y seis
J J de HERRERA."

Señor Director del Colegio de Mineria, Don Ramon del Moral.

MISION DE SANTA CLARA
Febrero 19, 1846.

MI ESTIMADO AMIGO Y SEÑOR QUE APRECIO:

V. sabe lo aficionado que soy al ramo de mineria y empeñado en encontrar una mina buena de Azogue he dado aqui con un criadero abundantisimo; al Ecselentisimo Señor Pre-

SELLO CUARTO { SEAL } UN REAL

sidente remito junto con esta unas piedras de cinabrio y un poco de azogue, estamos formando un horno y hemos ensayado dicho metal en un cañon de escopeta, tapado el oido con barro y metido la boca en agua, asi nos ha dado el treinta por ciento. Yo estimaria á V. que se toman el trabajo, en obsequio del bien publico que se ensayase este metal por depender de su trabajo esta operacion.

Que V. y toda la familia se conserven buenas y que mande cuanto guste á su afectisimo S. S. Q. B. S. M.

ANDRES CASTILLERO.

Son Copias.

Mexico Mayo cinco de mil ochocientos cuarenta y seis.

YSIDRO R. GONDRA
Oficial Primero.

Es Copia

Mexico Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

EXCELENTISIMO SEÑOR:

Por la nota de V. E de cinco del actual y copias que se sirvió acompañar, queda enterado con satisfaccion el Ecselentisimo Señor Presidente interino de la Republica, de que en la Mision de Santa Clara de la Baja California ha descubierto el Señor Dn Andres Castillero un criadero de azogue de escelente calidad, segun los ensayos

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practicados en ese Colegio, y de que se ha preguntado ya por esa Junta al referido Señor Castillero, la clase de auxilios que necesita para fomento de su brillante empresa. Asi mismo se ha impuesto S. E. de lo que participa esa Junta con respecto de la cantidad de azogue extraida de las Minas de Guadalcazar, cuyo resultado ha ecsedido al calculo que se habia formado.

Lo que tengo el honor de decir á V. E. en contestacion, reiterandole con este motivo las protestas de mi consideracion y aprecio.

Dios y Libertad.

Mexico Mayo nueve, de mil ochocientos cuarenta y seis.

BECERRA.

Excelentisimo Señor Don Vicente Segura
Presidente de la Junta de Fomento de Mineria.

Es Copia.

Mexico Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

JUNTA DE FOMENTO Y ADMINISTRATIVA DE MINERIA.

EXCELENTISIMO SEÑOR:

Como tuvo el honor esta Junta de anunciàr à V. E. en cinco del corriente, bajo de numero quinientos setenta y tres, el Señor Dⁿ Andres Castillero le ha derijido la solicitud que original tiene el gusto de acompañar—

SELLO CUARTO { Año de mil ochocientos cuarenta y mil ochocientos cuarenta y uno. } UN REAL

á V. E., sobre auxilios que necesita para el nuevo descubrimiento de la Mina de azogue en la Mision de Santa Clara del Departamento de Californias. La Junta no duda recomendar á V. E. dicha solicitud, porque persuadida de la grande importancia de la empresa, la considera acreedora á toda la proteccion del Supremo Gobierno, cuando por otra parte las circumstancias particulares de aquel Departamento, y el justo empeño que ha manifestado el Ecselentisimo Señor Presidente por conservar la integridad del territorio nacional, lo hacen digno de la mayor concideracion. Por consiguiente, la Junta es de parecer que se le facilite immediatamente al Señor Castillero la cantidad de cinco mil pesos en los terminos que propone; que la autorice para franquear

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las retortas y frascos de fierro de su pertenencia, y los otros mil pesos que podran emplearse en la construccion de retortas, cilindros y otros aparatos pequeños de destilacion, para dicha Mina. Aunque la Ley que autoriza á la Junta para hacer prestamos en fomento de los criaderos de azogue, exige el premio de un cinco por ciento anual al capital que se preste, es indudable que la oferta del Señor Castillero de pagar los cinco mil pesos con cincuenta quintales de azogue puestos en Mazatlan a disposicion de la Junta, á razon de cinco pesos cada uno—

SELLO CUARTO { SEAL } UN REAL.

Y en el termino de seis meses, presta sin duda mayores ventajas al fondo que el indicado interes.

La urgencia que manifiesta el Señor Castillero para verificar su marcha á aquel Departmento, y lo que á ella pueda contribuir en las circumstancias presentes, para la conservacion del Territorio Nacional, es en concepto de la Junta, mas que suficiente motivo para dejar á época mas oportuna la formacion de un contrato de compania ó de avio para al fomento de dicha mina.

Resta pues manifestar á V. E. que aunque la posecion dada al Señor Castillero por las autoridades locales de California, no ha sido conforme á la ordenanza, ues que se le han concedido pertenencias en la estencion de tres mil varas que equivalen á quince pertenencias conforme al articulo segundo del titulo octavo, es preciso considerar que reune en su favor la calidad de descubridor de un cerro *absolutamente nuevo en que no habia ninguna mina avierta* á quienes se conceden, en el articulo primero del titulo sexto, *tres pertenencias continuas ó interrumpidas* y se hubiesen *descubierto mas vetas una en cada una de ellas.* Reune tambien la circumstancia de trabajar en compania á las que se concede que sin perjuicio del derecho que por el titulo de descubridor tengan cuando lo sean, el que puedan denunciar cuatro pertenencias nuevas aun cuando esten contiguas y por un mismo rumbo; pero lo mas—

SELLO CUARTO { SEAL } UN REAL

digno de concideracion es, que siendo Californias un Departamento fronterizo y amagado con frecuencia por los emigrados de los Estados Unidos de America, y por los nuevos colonos del Oregon, parece conveniente conceder á la primera mina descubierta en un Departamento

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tan basto, mayor numero de pertenencias, lo que corrobora la razon que se encuentra al fin del articulo 1°. titulo octavo que dice, " considerando que los limites establecidos en las minas de estos Reynos á que se han arreglado hasta ahora los de nueva España, son muy estrechas á proporcion de la multitud, abundancia, y felicidad de las venas metalicas que la suma bondad del criador ha querido conceder á aquellas regiones, ordeno y mando que las minas que en adelante se descubrieren en veta nueva ó sin vecinos se observan estas medidas.

Segundo. Por el hilo, direccion, ó rumbo de la veta, sea de oro, de plata, ó de cualquiera otro metal, concedo á todo minero sin distincion de los descubridores (que ya tienen asignado su premio) doscientas varas castellanas que llaman de medir tiradas á nivel. " Por ultimo, en el articulo primero, titulo once, se expresa en estos terminos. Y por que no siendo suficiente el caudal de uno solo para grandes empresas, puede serlo de todos los compañeros, quiero y mando se procuren, promuevan, y protijan semijantes compañias por todos los terminos convenientes, concedien-

SELLO CUARTO { SEAL } UN REAL

do mí virey á los que las formaren todas las gracias, auxilios, exenciones que fueren de conceder á juício y discrecion del Real Tribunal de Mineria y sin detrimento del interes del publico y de mí real erario.

En cuanto á la propiedad que solicita el Sr. Castillero como colono de dos sitios de ganado mayor sobre la superficie de su propiedad minera, con el objeto de proporcionarse la leña necesaria para el beneficio, la Junta, no teniendo los conocimientos necesarios en la materia en que abunda el Supremo Gobierno, siempre resolverá el Excelentisimo Señor Presidente lo que creyere mas conveniente.

En tal concepto, al elevar á V. E. Junta la solicitud esta del Señor Castillero, no duda recomendarla muy eficazmente por la importancia vital de la empresa, y su increible trascendencia en el bien general y la prosperidad de la Republica.

La Junta tiene el honor con tal motivo, de reiterar á V. E. las protestas de su distinguido aprecio y consideracion.

Dios y Libertad. Mexico, Catorce de Mayo de mil ochocientos cuarenta y seis.

VICENTE SEGURA, Presidente.

Excelentisimo Señor Ministro de Justicia é instrucion publica.

Es copia.

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Mexico, Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO,

Sello tercero. Cuatro reales. Años de mil ochocientos cuarenta y seis y mil ochocientos cuarenta y siete.

Andres Castillero, vecino y minero en el Departmento de la Alta California, ante V. E. y V. S. S. como mejor proceda digo; que habiendo descubierto en la Mision de Santa Clara una mina de azogue de leyes tan altas como seguramente no se han visto, no solo en la Republica sino acaso en el mundo entero, como lo acreditan los ensayos hechos de orden de la Junta Facultativa del Colegio de Mineria, que reuniendo de todas las muestras que traje, desde la mejor hasta la infima, han dado por resultado un treinta y cinco y medio por ciento, mientras que ha habido muestras de las superiores que deben producir leyes mucho mayores; me veo en el caso, para satisfacer mis deseos en favor del progreso de mi patria de aprovechar esclusivamente en favor de los Mexicanos, las lisonjeras y muy fundadas—

SELLO CUARTO { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

esperanzas que proporciona semejante descubrimiento. En tal virtud, he denunciado y tomado posesion no solo de dicha Mina denominada Santa Clara, sino de una extencion hasta de tres mil varas en todas direcciones de dicho punto, he formado una compañia para su laboreo, he construido el tiro y cumplido todas las condiciones que previene la ordenanza, quedando la mina en frutos con la notable circumstancia de que las muestras que traje y que se han ensayado, han sido extraidas de la boca.

Muy facil me habria sido haber dado todo el vuelo necesario á la negociacion admitiendo las repetidas y ventajosas ofertas que se me han hecho por varias casas extrangeras de Californias, pero la empresa no necesita de semejantes auxilios que resultarian en ventaja estraña, cuando todo puede ser nacional, y no he dudado por lo mismo ocurrir ante V. E. y V. S. S. los unicos y pequeños recursos de que necesito; ellos se reducen á una corta anticipacion de cinco mil pesos en dinero, atendida la excesiva escasez de numerario que hay en aquel Departmento, y la pronta remision á el de retortas, cilindros

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y otros aparatos pequeños de destilacion, asi como de frascos de fierro para el embase del azogue.

Yo habria propuesto un contrato de compañia á la Junta, un avio ó cualquier otro convenio, si tuviese tiempo para poder proporcionar los datos y circums-

SELLO CUARTO { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

-tancias que se requieren para dichos contratos; pero compromitido por el Supremo Gobierno á marchar de esta capital dentro de algunos dias, me veo en el caso de limitarme á lo que parece no presenta dificultad, y abre el campo á nuevos convenios posteriores. Estoy bien persuadido de que la Junta accedera á mi solicitud en todo aquello que esté en sus facultades, y que elevará al Supremo Gobierno con recomendacion lo que sea del resorte de este.

Mis proposiciones pues, son las siguientes.

Primera—La Junta en el acto aprobar et convenio, me entregará una libranza contra una casa de Comercio de Mazatlan, valiosa de cinco mil pesos.

Segunda—Por mi parte me comprometo á situar en dicho puerto á los seis meses de haber salido de el, cincuenta quintales de azogue á razon de cien pesos cada uno, que remitiré de las primeras extracciones con absoluta preferencia á todo otro compromiso.

Tercera—La Junta mandará poner á mi disposicion antes de mi salida de la capital, las ocho retortas de fierro que tiene en su oficina y todos los frazcos para azogue que se hallan en la negociacion de Tasco, en estado de uso, y por ultimo entregará al Señor Don Tomas Ramon del Moral, mí apoderado, las cantidades que importen las retortas, cilindros, y otra clase de aparatos pequeños que se mande hacer para la negociacion hasta la cantidad de mil pesos.

SELLO CUARTO { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

Cuarta—Las retortas de la Junta las recibiré por el precio de su costo y los frazcos que escoja, á dos pesos cada uno conforme á su avaluo.

Quinta—El importe liquido de dichas retortas y frazcos, y el de las cantidades que se hayan entregado al Señor Moral lo devolveré en el termino de un año de este convenio, asi como el premio de la libranza contra Mazatlan, en azogue puesto en dicho puerto al precio de cien pesos quintal; pero si la Junta quisiere tomar una ó mas accionesen

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la mina, quedara en parte de la cantidad correspondiente á una ó mas barras.

Sexta—Entretanto que se aregla la compañia, durante un año contado desde el dia en que se apruebo este convenio, y satisfechos ya los cinco mil pesos de que habla la proposicion primera, preferiré á la Junta en la venta del azogue puesto en Mazatlan á razon de cien pesos quintal.

Setima—La Junta representará al Supremo Gobierno la necesidad de que apruebe la posesion que se me ha dado de la mina por las autoridades locales de Californias, en los mismos terminos en que hoy la tengo.

Octava—Ygualmente le representará las ventajas de que como colono se me concedan dos sitios de ganado mayor sobre el terreno de mi posesion minera con el ojeto de poderme aprovechar de las maderas para mis quemas.

Novena—Al cumplimiento de este contrato hipoteco la misma mina y todas sus pertenencias.

El que subscribe sugeta á la deliberacion de la Junta esta solicitud la que acceptada se podrá elevar á contrato formal y legalizar del modo mas conveniente.

Dios y Libertad.

Mexico, doce de Mayo de mil ochocientos cuarenta y seis.

ANDRES CASTILLERO.

Es copia. Mexico, Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

Excelentisimo Señor:

Habiendo dado cuenta el Excelentisimo Señor Presidente interino de la Republica con la nota de V. E. de catorce del presente á que se sirvió acompañar con recomendacion la solicitud del Señor D^{n}. Andres Castillero para el fomento de la mina de azogue que ha descubierto en la Mision de Santa Clara en la Alta California; se ha servido S. E. aprobar en todas

SELLO CUARTO { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

sus partes el convenio celebrado con dicho individuo, para principiar

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la esplotacion de dicho mineral, y con esta fecha se hace la comunicacion que corresponde al Ministerio de Relaciones exteriores y gobernacion para que libre las ordenes oportunas por lo relativo á lo que contiene la octava proposicion á la concesion de terrenos en aquel departamento.

Reitero á V. E. las protestas et cetera.

Dios y Libertad.

Mexico Mayo veinte de mil ochocientos cuarenta y seis.

BECERRA.

Excelentisimo Señor Don Vicente Segura, Presidente de la Junta de Fomento de Mineria.

La anterior se comunicó á este Ministerio de Relacions diciendó: Y tengo el honor de incertarlo á V. E. á fin de que por lo respectivo á la solicitud del Señor Castillero, á que ha tenido á bien acceder el E. S. Presidente interino sobre que como colono, se le conceda dos sitios de ganado mayor, sobre el terreno de su posecion minera se sirva V. E. librar las ordenes de que se trata.

Reitero á V. E. &c., fecha ut supra.

BECERRA.

E. S. Ministro de Relaciones exteriores y Gobernacion.

Es copia.

Mexico Abril veinte y tres de mil ochocientos cincuenta.

O. MONASTERIO.

El infrascrito Ministro de Relaciones Interiores y Exteriores. Certifico: que aunque en la comunicacion que la Junta de Fomento y Administrativa de Mineria derigió en cinco de Mayo de mil ochocientos cuarenta y seis al E. S. Ministro de Justicia relativa á la mína de cinabrio descubierta en California por Dn. Andres Castillero, se escribio que ella esta situada

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SELLO CUARTO { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

en la Mision de Santa Clara, en la Baja California, y lo mismo se dice en la contestacion del Ministerio, fecha nueve del citado mes, de cuyos documentos se dieron copias en veinte y tres de Abril ultimo al Señor Eustaquio Barron; este es un equivoco, pues dicha mina y los terrenos que se adjudicaron á Castillero, estan en territorio de la Alta California, cuya concesion declaró legitima y aprobó el Supremo Gobierno despues. Y doy el presente certificado para los fines que convengan á pedimento del espresado Señor Barron, en Mexico, á treinta de Julio de mil ochocientos cincuenta.

LACUNZA.

ESCRITO.

Eustaquio Barron de esta vecindad, ante V. como mejor de derecho proceda, y salvas las protestas legales, digo: que á mi derecho conviene tener un testimonio autorizado del contenido que se espresa en los documentos que con la solemnidad debida acompaño en once fojas utiles; y al efecto, A. V. suplico se sirva mandar que por el actuario se compulse el referido testimonio, sin necesidad de citacion por no haber á quien competa, y hecho se me entregue con los originales que presento, pues todo es conforme á Justicia, que imploro jurando con lo necesario et cetera.

EUSTAQUIO BARRON.

AUTO.

Mexico, Agosto diez y nueve de mil ochocientos cincuenta.

Por presentado con los documentos que acompañan: como lo pide, y obre los efectos qua haya lugar. Lo proveyo y firmó el Señor Dn. Antonio Madrid Juez de Letras del ramo civil en el Distrito Federal: doy fé.

A. MADRID.

Ramon de la Cueva.

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Concuerdan las copias y escrito insertos con sus originales que devolvi al

SELLO CUARTO { Anos de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

Senor interesado; de donde se compulsó el presente por duplicado en virtud de lo mandado en el auto tambien incerto, en la cuidad de Mexico á veinte y dos de Octubre de mil ochocientos cincuenta y va en diez y seis fojas, la primera y su correspondiente del sello primero y las demas del cuarto, siendo testigos á su saca y correcion Don Juan A. del Toro, Don Juan Zavala y Don Felipe de Jesus Moctezuma de esta vecindad.

Doy fé, es caso de vale testado el diez no vale.

RAMON DE LA CUEVA.
E. N. y P^co.

Los que subscribimos certificamos y damos fé que Don Ra–

SELLO CUARTO { Anos de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

mon de la Cueva, por quien está autorizado el anterior testimonio es escribano Nacional y Publico del numero de esta cuidad, fiel y de entera confianza por lo que á cuantos instrumentos legaliza se les ha dado y da entera fé y credito en juicio y fuera de èl Y para constancia ponemos la presente sellado con el de nuestro Nacional Colegio en Mexico, á veinte y seis de Octubre de mil ochocientos cincuenta.

† F.V. FERMIN VILLA, † M.A. MIGUAL ARISTIQUI, † C.L. C. LANDGRAVE.

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[No. 839.]

CONSULATE OF THE U. S. OF AMERICA,
Mexico, January 8th, 1851.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of Fermin Villa, Miguel Arsitiqui and Cresen^{co}. Landgrave, subscribed to the preceding certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their respective official acts, who are all well known to me, and were at the time of subscribing the same, duly authorized Notaries Public for the City of Mexico, and that all their official acts are entitled to full faith and credit as such.

Register F; folio 30.

Fees, $4.

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal the day and year first before written.

(Consular Seal.)

JOHN BLACK,
Consul.

Ysidro Rafael Gondra, Secretario de la Junta Directiva y Administrativa de Mineria:

Certifico que del espediente que obra en la Secretaria de Mineria relativo al denuncio posesion y adjudicacion á D. Andres Castillero de la mina de cinabrio que existe en la Alta California llamada el Nuevo Almaden consta que por informe de la Junta Directiva el Supremo Gobierno de la Republica, en virtud de lo pedido por el Senor Castillero fué espedido á este el titulo legal ó testimonio respectivo á su adquisicion conforme á las ordenanzas del ramo y que esa concesion al mencionado Castillero fué de una pertenencia de tres mil varas sobre el plano de dicha mina de azogue para trabajarla en esa estencion y de dos sitios de ganado mayor contiguos á la referida pertenencia para sacar de ellos la leña y demas aprovechamientos indispensables y utiles para los trabajos de la mina, cuyas concesiones particulares y especiales creyó conveniente hacer el Supremo Gobierno por el favor que las leyes disponen que se imparta á los descubridores de minas de azogue procediendo en ello de conformidad con lo informado por la Junta Directiva.

Y á pedimento de los propietarios del Nuevo Almaden doy la pre-

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sente certificacion refireindome al espediente enunciado, de que todo consta como va referedo y la firmo en Mexico, á 23 de Enero de 1851.

YSIDRO R. GONDRA.
Srio.

El infrascrito, oficial mayor del Ministerio de Relaciones Interiores y Exteriores:

Certifico que la firma que antecede del Sr. Don Ysidro Rafael Gondra, Secretario de la Junta Directiva y Administrativa de Mineria, es ligitima y la misma que acostumbra en sus actos oficiales.

Mexico, Febrero 26, de 1851.

JOSÈ MARIA ORTIZ MONASTERIO.

I hereby certify that the above is the signature of Don Jose Maria Ortiz Monasterio, under secretary of State of foreign affairs of the Mexican Republic.

PERCY W. DOYLE.

SEAL. Her Britannic Majesty's chargé d'affaires in the Republic of Mexico.

Mexico, February 26th, 1851.

No. 1075. Consulate of the U. S. of America, Mexico, February 26th, 1851.

I, the undersigned Consul of the United States of America for the city of Mexico, hereby certify, that the signatures of José Maria Ortiz Monasterio and Percy W. Doyle subscribed to the foregoing certificates, are in the proper hand-writing of the said persons respectively, the same as used by them in their several official acts; who are well known to me, and were at the time of subscribing their respective names as follows, to wit, the first—First Clerk of the Department of Interior and Foreign Relations of the Mexican Government; and the second, Her Britanic Majesty's chargé d'affaires near the aforesaid Government; and that all their several acts are entitled to full faith and credit as such respectively.

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Register F, folio 75. Fees, $4.

SEAL.

In testimony whereof I have hereunto set my hand and affixed the consular seal the day and year above written.

JOHN BLACK,
Consul.

Filed in Office Jan. 30, 1855.

GEO. FISHER, Secy.

"D." TRANSLATION.

STAMP FIRST { Seal for the years 1850 and 1851. } EIGHT DOLLARS

JUNTA FOR THE ENCOURAGEMENT AND ADMINISTRATION OF MINING, No. 573.

MOST EXCELLENT SIR:

Professor Don Jomas Ramon del Moral having presented to this Junta some specimens of Cinnabar from the Mission of Santa Clara in Lower California, which Don Andres Castillero sends him, together with the annexed copies, with the object of inciting the Supreme Government, that it may be pleased to aid so important an enterprize; said specimens were immediately sent to His Excellency the Director of the College that the proper assays might be made.

His Excellency in an official communication of the twenty-ninth of last month, received yesterday, says that which follows:

Señor Don Jomas Ramon del Moral, President of the *Junta Facultativa* of the National College of Mining, in an official communication of the 24th ulto., says to me as follows:—Most Excellent Sir: The Junta Facultativa having examined the documents which Your Excellency referred to it on the twenty-first of the present month relative to a deposit of Cinnabar discovered in California by Señor Don Andres Castillero and another of coal on the Bay of San Francisco, has the honor to inform your Excellency that the specimens sent by said Señor Castillero, were deposited, some in the Mineralogical Cabinet, and others assayed by the professor of Chemistry, Don Manuel Herrera.

The assay gave a *ley* of twenty-five and a half per cent., a mean of the different specimens having been taken to make it (the assay), for there are some so rich that they are pure cinnabar.

The Junta believes that Señor Castillero has by such an important

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discovery made himself deserving of the efficacious protection of the Supreme Government and of the Junta for the Encouragement of Mining, and is persuaded that Your Excellency will interpose all your influence, to the end that this individual may receive a proof that the Supreme Government knows how to distinguish and reward those citizens who contribute to the prosperity of the country.

With this motive I repeat to Your Excellency the considerations of my esteem and respect.

And I have the honor to transmit it to Your Excellencies as the result of your despatch in " the matter."

The Junta, on enclosing the foregoing communication to Your Excellency, has the honor to inform you that it has already asked Señor Castillero what kind of aid or protection he needs for the encouragement of his brilliant enterprise, congratulating the Supreme Government on a discovery which, if it meets from the beginning with the protection it deserves, may change completely the aspect of our mining, freeing it from the necessity, in which it has been until now, of foreign quicksilver.

With this motive, the Junta takes advantage of the opportunity to inform Your Excellency that, as on the twenty-fourth of this month the favor terminates which the law guarantees of five dollars premium on each hundred weight of quicksilver, attracted from the mines of the nation, the miners of Guadalcazar have proven that they have taken out one thousand five hundred and seventy-five quintals from December, eighteen hundred and forty-four, to the end of March last, which result exceeds the calculation, which until now has been made, that the product of this mineral was a hundred quintals per month.

The Junta on this occasion reiterates to Your Excellency the assurances of its distinguished consideration and esteem.

God and Liberty.
Mexico, May 5, 1846.

(Signed) VICENTE SEGURA,
President.

The secretary being occupied.

(Signed) YSIDRO R. GONDRA,
First Clerk.

To his Excellency the Minister of Justice.

It is a copy.
Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

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OFFICE OF THE SECRETARY OF THE JUNTA, FOR THE ENCOURAGEMENT OF MINING.

Señor Don Andres Castillero, commissioned last year by the Supreme Government to pass to California on an object of public service, tells me, in letters written from the Mission of Santa Clara on the nineteenth and twenty-second of February of this year, that which follows:

At the distance of five leagues from this mission, to the west, I have discovered and denounced a very abundant mine of quicksilver; and to confirm my truth, I send you some ores of those which have been taken from the top of the vein—a little quicksilver also goes, which we have taken out with the greatest facility.

The Señor Director of the College of Mining, Don Ramon del Moral, will receive much pleasure in seeing equalled the ores of Almaden.

From the width of the vein, and the abundance of metals taken out within one year, with the protection of the Supreme Government, the Republic will not need quicksilver from foreign parts.

I send you some trifles made by the Indians of the North West, and products of this country. Coal is very abundant, and is found on the coasts of the Bay of San Francisco, so that the steamers sending out their small boats may load all that they require. This discovery was made by Colonel Don Juan Bautista Alvarado. The rock Crystal is a very large "hill."

Copy.

Mexico, April 13, 1846.

(Signed) J. J. de HERRERA.

Señor Director of the College of Mining, Don Ramon del Moral.

MISSION OF SANTA CLARA, February 19, 1846.

MY ESTEEMED FRIEND AND APPRECIATED SIR:

You know how devoted I am to the branch of mining, and intent upon finding a mine of quicksilver. I have discovered a most abundant deposit. With this I send to His Excellency, the President, some ores of Cinnabar, and a little quicksilver. We are forming a furnace, and assayed said metal in a musket barrel, the touch-hole stopped with clay, and the muzzle put in water. In this manner it has given us thirty per cent. I would esteem it a favor if you would take the

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trouble, for the sake of the public good, to cause this metal to be assayed, as this operation depends upon your work.

May you and all the family retain your health, and as much as you please command your obedient servant, &c., &c.

(Signed) ANDRES CASTILERO.

The above are copies.

Mexico, May 5, 1846.

(Signed) YSIDRO R. GONDRA,
First Clerk.

The above is a copy.

Mexico, April 23, 1850.

(Signed) O. MONASTERIO.

MOST EXCELLENT SIR:

By your Excellency's note of the 5th inst. and copies which you were pleased to transmit therewith, His Excellency, the President, *ad interim*, of the Republic, learns with satisfaction that in the Mission of Santa Clara, of Lower California, Señor Don Andres Castillero has discovered a deposit of quicksilver of excellent quality, according to the assays made in that college, and that said Señor Castillero has been asked by that Junta what kind of assistance he needs to encourage his brilliant enterprise.

His Excellency is likewise informed of that which the Junta reports relative to the quantity of quicksilver extracted from the mines of Guadalcazar, the result of which has exceeded the calculation which was made.

This is what I have the honor to say to your Excellency in answer, repeating to you with this opportunity the assurance of my consideration and esteem.

God and Liberty.

Mexico, May 9, 1846.

(Signed) BECERRA.

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His Excellency Don Vicente Segura,
President of the Junta for the Encouragement of Mining.

Copy.

Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

JUNTA FOR THE ENCOURAGEMENT AND ADMINISTRATION OF MINING.

MOST EXCELLENT SIR:

As this Junta had the honor to inform your Excellency on the 5th inst. in Number 573, Señor Don Andres Castillero has directod to it a petition, the original of which it has the pleasure to transmit herewith, upon the assistance which he needs for the new discovery of the Quicksilver mine in the Mission of Santa Clara, in the Department of Californias.

The Junta has no hesitation in recommending said petition to your Excellency, for, being persuaded of the great importance of the enterprise, it considers it entitled to all the protection of the Supreme Government, and also the particular circumstances of that Department, and the just desire which his Excellency, the President, has shown to preserve the integrity of the national territory, render it worthy of the greatest consideration.

The Junta is consequently of opinion that there should be immediately furnished to Señor Castillero the sum of five thousand dollars in the terms he proposes, that it should be authorized to furnish him with the iron retorts and flasks belonging to it, and the other thousand dollars, which can be employed in the construction of retorts, cylinders and other small apparatus of distillation for said mine. Although the law authorizing the Junta to make loans for the encouragement of deposits of quicksilver, exacts a premium of five per cent. per annum on the capital loaned, it cannot be doubted that the offer of Señor Castillero to pay the five thousand dollars with fifty quintals of quicksilver placed in Mazatlan at the disposition of the Junta, at the rate of one hundred dollars each, and in the term of six months, offer greater advantages to the fund than said interest.

The haste shown by Señor Castillero to put in execution his journey to that Department, and that which his so doing may contribute under present circumstances towards the preservation of the national territory, is, in the opinion of the Junta, a sufficient motive to leave until a more opportune occasion the formation of a contract of partnership or of "*avio*" (for) the encouragement of said mine.

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It remains then to show to your Excellency, that although the possession given to Señor Castillero, by the local authorities of California, has not been in conformity with the ordinance, inasmuch as there have been granted him "pertenencias" to the extent of three thousand varas, which are equivalent to fifteen "pertenencias" agreeable to the second article of the eighth title, yet it is necessary to consider that he has in his favor the qualification of discoverer of an *absolutely new hill in which there was no mine open*, and to such there is granted, in the first article of the sixth title, *three pertenencias, either continuous or interrupted, and if he shall have discovered other veins one (pertenencia) in each of them.*

He has also in his favor the circumstances that he works it in company with others, to whom there is granted that, without prejudice to the right which they may have by the title of discoverers when they are such, they may denounce four new "pertenencias," even though they are contiguous, and in the same direction; but that which is most worthy of consideration is that Californias, being a frontier Department, and frequently threatened by the emigrants from the United States of America, and by the new colonists of Oregon, it seems proper to grant to the first mine, in a Department so extensive, a greater number of "pertenencias," which view is corroborated by the reason found at the end of the eighth Tit., Article 1st, which says: "Considering that the Courts established in the mines of these kingdoms, to which those of New Spain have until now been made to conform, are very contracted in proportion to the multitude, abundance, and richness of the metallic veins, which the goodness of the Creator has pleased to grant to those regions, I order and command that in mines which may hereafter be discovered in a new vein, or without neighbor, these measurements be observed.

2nd. Along the thread, direction, or course of the vein, be it of gold, silver, or any other metal, I grant to every miner, without distinction of the discoverers, (who have their reward already assigned to them), two hundred Castillian varas, called, 'varas de medir,' measured on a level."

Lastly, in the first article, eleventh title, there are expressed these terms:

"And because the capital of a single individual may not be sufficient for great undertakings, while that of all the partners may be, I will and command that such companies be encouraged, promoted, and protected by all convenient measures. My Viceroy granting to those who may form such, every favor, aid, and exemption, which can be granted them according to the judgment and discretion of the Royal Tribunal of Mines, and without detriment to the public or to my Royal Treasury."

In reference to the ownership of two square leagues which Señor

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Castillero solicits, as a Colonist, upon the surface of his mining property, for the purpose of supplying himself with the firewood necessary for the reduction of ores (beneficio,) not having the necessary information on the matter, of which the Supreme Government has abundance, His Excellency, the President, will decide as he may think proper.

In this view the Junta, in sending up to your Excellency the petition of Señor Castillero, has no hesitation in recommending it very efficaciously on account of the vital importance of the undertaking, and its incredible influence upon the general good and prosperity of the Republic.

The Junta has the honor, on this occasion, to repeat to your Excellency the assurances of its distinguished esteem and consideration.

God and Liberty.

Mexico, May 14, 1846.

(Signed) VICENTE SEGURA,
President.

His Excellency the Minister of Justice of Public Instruction.

Copy.

Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

STAMP THIRD, FOUR REALES.

For the years Eighteen Hundred and Forty-Six and Eighteen Hundred and Forty-Seven.

I, Andres Castillero, resident and miner in the Department of Upper California, before your Excellency and your Honors, as I best may proceed, say: that having discovered in the Mission of Santa Clara a mine of quicksilver of *leys* richer certainly than was ever seen before, not only in the Republic, but perhaps in all the world, as shown by the assays made by order of the *Junta Facultativa* of the College of Mining, which—some of all the specimens I brought being mixed from the best to the worst—have given a result of thirty five and a half per cent., while there have been specimens of the best kind which must produce much greater *leys*. I see myself in a condition to satisfy my

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desires in favor of my country, of benefitting exclusively Mexicans, by the flattering and well founded hopes which such a discovery offers.

In virtue of this, I have denounced and taken possession not only of said mine named Santa Clara, but also of an extent of three thousand varas in all directions from said points. I have formed a company to work it, I have constructed the pit, and complied with all the conditions prescribed by the ordinance; the mine yielding ore with the notable circumstance that the specimens which I brought, and which have been assayed, have been taken out of the mouth. It would have been very easy for me to have given the necessary extension to the negociation by accepting the repeated and advantageous offers which have been made me by several foreign houses in California; but as the undertaking does not require that kind of assistance, which would result in advantage to foreigners, when it may be entirely national, I have not for that reason hesitated to apply to your Excellency, and your Honors, to obtain the small and only resources which I need.

These are reduced to a small advance of five thousand dollars in money, in consideration of the excessive scarcity of coin in that department, and the quick remittance to it of retorts, cylinders, and other small distilling apparatus, and also iron flasks for bottling up the quicksilver.

I would have proposed a contract of partnership to the Junta, an *avio*, or some other agreement, if there had been time to be able to furnish the proofs and details which would be required for said contracts; but being compromised by the Supreme Government to leave this Capital within a few days, I find it necessary to restrict myself to that which appears to present no difficulty, and which may open a way to our future agreement.

I am well persuaded that the Junta will accede to my request, so far as may be within its power, and that it will send up to the Supreme Government with a recommendation that which may require the decision of the latter.

My propositions, then, are the following:

First.—The Junta, in the act of approving the agreement, will give me a draft for five thousand dollars on some mercantile house in Mazatlan.

Second.—On my part, I bind myself to place in said port, within six months after leaving it, fifty quintals of quicksilver, at the rate of one hundred dollars each, which I will send from the first taken out, with absolute preference over every other engagement.

Third—The Junta will order that there be placed at my disposition before leaving the Capital, the eight iron retorts which it has in its office, and all the quicksilver flasks which can be found in the *negociacion* of Tasco, which are fit for use; and lastly, it will deliver to Señor

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Don Tomas Ramon del Moral, my attorney, the sums to pay for the retorts, cylinders, and other kinds of small apparatus, which may be ordered to be made for the *negociation*, to the amount of one thousand dollars.

Fourth.—I will receive the retorts of the Junta at cost price, and the flasks which I may select at two dollars a piece, agreeably with their valuation.

Fifth.—The asertained value of said retorts and flasks, and that of the sums which may be delivered to Señor Moral, I will return in the term of one year from this agreement, and also the premium on the draft on Mazatlan, in quicksilver, placed in said port at the price of one hundred dollars the quintal; but if the Junta should wish to take one or more "acciones" in the mine, it shall be left as a part payment of the sum corresponding to one or more "barras."

Sixth.—While the company is being formed, during the period of one year, counted from the date on which this agreement shall be approved, and the five thousand dollars spoken of in the first proposition being paid, I will give the preference to the Junta in the sale of quicksilver placed in Mazatlan, at the rate of one hundred dollars the quintal.

Seventh.—The Junta shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities of California, in the same terms as those in which I now hold it.

Eighth.—It shall also represent the advantage of there being granted to me, as a colonist, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my business.

Ninth.—For the compliance of this contract I pledge the mine itself and all its appurtenances.

The subscriber subjects this request to the deliberation of the Junta, which if accepted, may be made into a formal contract, and made legal in the most proper manner.

God and Liberty.

Mexico, May 12th, 1846.

(Signed.) ANDRES CASTILLERO.

Copy.

Mexico, April 23d, 1850.

(Signed.) O. MONASTERIO.

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MOST EXCELLENT SIR.

Having reported to his Exellency, the President, *ad interim*, of the Republic, your Excellency's note of the 14th inst., with which you were pleased to transmit with a recommendation, the petition of Señor Don Andres Castillero, for the encouragement of the quicksilver mine which he has discovered in the Mission of Santa Clara in Upper California. His Excellency has been pleased to approve in all its parts the agreement made with that individual in order to commence the extraction of said mineral, and on this day the corresponding communication has been made to the Minister of Exterior Relations and Government, to issue the proper orders respecting that which is contained in the eighth proposition for the grant of lands in that Department.

I repeat to your Excellency the assurances, &c.

God and Liberty.

Mexico, May 20, 1846.

(Signed.) BECERRA.

To his Excellency, Don Vicente Segura, President of the Junta for the encouragement of Mining.

The foregoing was communicated to this Ministry of Relations, saying, "And I have the honor to enclose it to your Excellency, to the end that with respect to the petition of Señor Castillero, to which his Excellency, the President, *ad interim*, has thought proper to accede that there be granted him, as a colonist, two square leagues *upon* the lands of his mining possession. Your Excellency may be pleased to issue the orders corresponding."

I repeat to your Excellency, &c.

Date as above.

(Signed,) BECERRA.

To his Excellency, the Minister of Exterior Relations and Government.

Copy.

Mexico, April 23d, 1850.

(Signed.) O. MONASTERIO.

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I, the undersigned, Minister of Internal and External Relations, certify, that although in the communication which the Junta for the Encouragement and Administraion of Mining directed on the 5th of May 1846, to his Excellency the Minister of Justice, relative to the min- of cinnabar discovered in California by Don Andres Castillero, it was written that it was situated in Lower California, and the same is said in the answer from the Ministry, dated the 9th of the said month of which documents copies were given on the twenty-third of April last, to Señor Eustaquio Barron. This is a mistake, for said mine and the lands granted to Castillero are in the territory of Upper California, which grant the Supreme Government afterwards approved and declared legitimate.

And I give this certificate for the purposes which it may serve, at the request o the said Señor Barron, in Mexico, on the 30th of June, 1850.

(Signed.) LACUNZA.

PETITION.

I, Eustaquio Barron, of this neighborhood, before you as I best may proceed in law, and with all legal reservations, say: That it is requisite for the security of my right to have an authenticated copy of the enclosed, which is expressed in the documents which, with due solemnity, I transmit on eleven written leaves; and for that purpose I pray you to have the goodness to order that the said copy be made by the Notary, without having occasion to issue a summons, there being no person to be summoned; and being finished, that it be given to me with the original which I present; for all that I ask is in conformity with justice.

Swearing whatever may be necessary, &c.

(Signed.) EUSTAQUIO BARRON.

ORDER.

Mexico, August 19, 1850.

Admitted with the accompanying documents, let it be done as he requests, and let it answer the purposes which it may serve. Señor

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Don Antonio Madrid "Juez de Letras" of the Civil Branch in the Federal District, thus ordered and signed.

(Signed.) MADRID.

I certify.

(Signed.) RAMON DE LA CUEVA.

The foregoing documents agree with their originals, which I returned to the person interested, to which I refer, from which the present copy was made to the letter, faithfully compared and corrected in conformity with that ordered in the act included, at the request of Señor Don Eustaquio Barron, in the city of Mexico, on the twenty-first of August, eighteen hundred and fifty, and it goes on nine leaves, the first being of the 1st stamp, and the others of the 4th stamp, for the present two years, the witnesses to its copy and correction being Don Juan Lavala, Don Felipe Moctezuma, and Don Manuel Rojo, of this neighborhood.

I certify,

(Signed.) RAMON DE LA CUEVA,
National Notary Public.

We, who subscribe, certify and assure that Don Ramon de la Cueva, by whom is authenticated the foregoing copy, is a National Notary Public, of the number as it is called, faithful and of confidence, and to whatsoever instruments he makes legal there has been given and is given entire faith and credit in court and out of it.

And in testimony thereof we give this present, sealed with the seal of our National College in Mexico, on the twenty-first of August, one thousand eight hundred and fifty.

Seal of the National College of Notaries of Mexico.

(Signed) IGNACIO PEÑA.

(Signed) FERMIN VILLA.

(Signed) MAN'L. CABEZA DE VACA.

No. 932. CONSULATE OF THE U. S. OF AMERICA,
MEXICO, January 8th, 1851.

I, the undersigned, Consul of the United States of America for

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the City of Mexico, hereby certify that the signatures of Ignacio Peña, Man'l. Cabeza de Vaca, and Fermin Villa, subscribed to the preceding certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their official acts, who are well known to me, and were at the time of subscribing their several names, duly authorised Notaries Public for the City of Mexico, and that all their official acts are entitled to full faith and credit as such respectively.

{ SEAL } In testimony whereof I have hereunto set my hand, and affixed the Consular seal, the day and year above written.

(Signed) JOHN BLACK,
Consul.

Register F. folio 52.

I, the undersigned, 1st Chief Clerk of the Ministry of Interior and Exterior Relations, certify that the forogoing copy of the documents or certificates given by me of the titles of the Mine of New Almaden, is equal to and agrees with their literal tenor, as shown by the comparison which has been made, and that the signature of Don Ramon de la Cueva, which covers it, and those of the other Notaries which prove it, are the same which they use as such Notaries.

Mexico, January 10, 1851.

(Signed) JOSE MARIA ORTIZ MONASTERIO.

Fees, $4.

No. 970.

Consulate of the U. S. of America,
Mexico, Jan. 11, 1851.

I, the undersigned, Consul of the United States of America for the City of Mexico, do hereby certify that the signature of Josè Maria Ortiz Monasterio, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same, First Clerk of the Department of Interior and Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

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In testimony whereof I have hereunto set my hand and affixed the Consular seal, the day and year above written.

{ SEAL } (Signed) JOHN BLACK.

Register F. fo. 58.

Fees $2.

Isidro Rafael Gondra, Secretary of the Directive and Administrative Junta of Mining.

I certify that the expediente which exists in the Secretary's office of Mining, relative to the denouncement, possession, and grant to Don Andres Castillero, of the Mine of Cinnabar which exists in Upper California, called New Almaden, shows: That in consequence of the reports of the directive Junta, the Supreme Government, in virtue of the petition of Señor Castillero, issued to him the legal title, or respective testimony of his acquisition in conformity with the ordinances on that branch, and that this grant to the said Castillero, was for a "pertenencia" of three thousand varas upon the plan of said quicksilver mine, in order to work it to that extent, and for two square leagues contiguous to the said "pertenencia," to take from them the firewood and other indispensable and useful benefits for the works of the mine, which grants, particular and special, the Supreme Government thought proper to make on account of the favor which the laws direct to be imparted to the discoverers of quicksilver mines, proceeding in them in conformity with that reported by the Directive Junta.

And at the request of the owners of New Almaden, I give the present certificate, referring to the said expediente, by which all the foregoing is proved, and I sign it in Mexico, on the 23d of Jan. 1851.

(Signed) YSIDRO R. GONDRA,
Secretary.

The undersigned, Chief Clerk of the Ministry of Interior and Foreign Relations:

Certifies that the foregoing signature of Sr. Don Ysidro, Secretary of the Directive and Administrative Junta of Mining is legitimate, and the same which he is accustomed to use in his official acts.

Mexico, Febr'y 26th, 1851.

(Signed) JOSE MARIA ORTIZ MONASTERIO.

Fees $4.

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I hereby certify that the above is the signature of Don Jose Maria Ortis Monasterio, Under-Secretary of State for Foreign Affairs of the Mexican Republic.

{ SEAL } (Signed) PERCY W. DOYLE.

Her Britannic Majesty's Chargé d'Affaires in the Republic of Mexico.

Mexico, Feb'y 26, 1851.

No. 1075.

CONLULATE OF THE U. S. OF AMERICA,
MEXICO, February 26, 1851.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of José Maria Ortiz Monásterio, and of Percy W. Doyle, subscribed to the foregoing certificate, are in the proper hand writing of said persons respectively, the same as used by them in their several official acts, who are both well known to me, and were at the time of subscribing their respective names as follows to wit: the first, First Clerk of the Department of Interior and of Foreign relations of the Mexican Government; and the second, Her Britannic Majesty's Chargé d'Affaires near the aforesaid government, and that all their several acts are entitled to full faith and credit as such respectively.

In testimony whereof, I have hereunto set my hand and affixed the Consular seal, the day and year above written.

{ SEAL } (Signed) JOHN BLACK,
Consul.

Filed in Office, Sep. 30th, 1852.

GEO. FISHER,
Secy.

B. P. L. EXHIBIT TO DEPOSITION OF JOSÉ MARIA LAFRAGUA. JANUARY 29, 1855.

Copia literal del decreto que se halla puesto al margen de la comunicacion de la Junta Mineria, en que se insertó la solicitud de Castillero.

Mayo 20 *de* 1846.

" Se concede en los terminos que se propone; y por lo tocante al

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terreno, librese la orden correspondiente al Ministro de Relaciones para las providencias de su resorte, en el concepto de que el Supremo Gobierno está anuente á la solicitud."

J. M. LAGRAGUA.

Filed in office Jan'y 30th, 1855.

GEO. FISHER,
Secretary.

TRANSLATION OF EXHIBIT B., P. L., TO DEPOSITION OF J. M. LAFRAGUA.

A literal copy of the decree which is formed on the margin of the communication from the "Junta de Mineria," which was inserted in the petition of Castillero.

May 30, 1846.

It was granted upon the terms proposed; and with respect to the land, let the proper order issue to the Minister of Relations for the proceedings, so far as his department is concerned, with the understanding that the Supreme Government is favorable to the petition.

(Signed) J. M. LAFRAGUA.

I hereby certify the foregoing to be a true and correct translation of a document marked "B., P. L.," exhibit to deposition of José Maria Lafragua, in case No. 366, on the docket of the U. S. L. Commission, &c.

Witness my official signature, this 30th day of January, A. D. 1855.

GEO. FISHER,
Secretary.

Filed in office, Jan. 30, 1855.

GEO. FISHER,
Secretary.

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C., P. L. EXHIBIT TO THE DEPOSITION OF JOSÉ MARIA LAFRAGUA, JANUARY 29TH, 1855.

MINISTERIO DE RELACIONES EXTERIORES, GOBERNACION Y POLICIA:

EXMO. SR.,

El E. Y. S. Ministro de Justicia, en oficio del corriente me dice lo que copio:

"E. S.—Hoy digo al E. S. D. Vicente Segura, Presidente de la Junta de Fomento de Mineria, lo siguiente:

'E. S. Habiendo dado cuenta al E. S. Presidente interino con la nota de V. E. de 14 del presente á que se sirvio acompañarme, con recomendacion, la solicitud del S. D. Andres Castillero para el fomento de la Mina de Azogue que ha descubierto en la Mision de Sta. Clara, en la Alta California; se ha servido S. E. aprobar en todas sus partes el convenio celebrado con dicho individuo para principiar la esplotacion de dicho mineral, y con esta fecha se hace la comunicacion que corresponde al Mintsterio de Relaciones Esteriores y Gobernacion, para que libre las ordenas oportunas por lo respectivo á lo que contiene la 8ª. proposicion, relativa á la concesion de terrenos en aquel Departamento.'

Y tengo el honor de insertarlo á V. E. a fin de que por lo respectivo á la solicitud del S. Castillero, á que ha tenido á bien acceder el E. S. Presidente interino sobre que como cólono se le conceda dos sitios de ganado mayor sobre el terreno de su posesion minera, se sirva V. E. librar las ordenes de que se trata.

Reitero á V. E., &ª."

Y lo trascribo á V. E. para que, con arreglo á lo que prevengan las leyes y disposiciones sobre colonizacion, ponga al S. Castillero en posesion de los dos sitios que se mencionan.

Dios y Libertad.

Mexico, Mayo 23 de 1846.

CASTILLO LANZAS.

E. S. GOBERNADOR DEL DEPARTAMENTO DE CALIFORNIAS.

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SELLO CUARTO. UN REAL.

SEAL.

JESUS VEJAR, *Escribano Publico.*

Certifico y doy fé, que el presente instrumento autentico firmado por el Exmo. Señor Ministro de Relaciones Esteriories, Gobernacion y Policia, Castillo Lanzas, ha sido respetado bajo esa firma y obsequiado por las autoridades Mejicanas que gobernaban en la Alta California en el año de mil ochocientos cuarenta y seis, segun las inserciones que aquellas mismas autoridades hizieron de tal instrumento en actos que autorizaron sobre el asunto que verzan, y los cuales doy fé haber visto, y por esta razon debe tenerse por cierto y del puño y letra del E. Señor Ministro esa firma en el repetido instrumento y como que tambien por actos que ante mi han pasado la reconoció el Señor Don Andres Castillero.

Y á pedimento de los Señores Barron, Forbes y Compañia signo y firmo el presente en Tepic á quince de Marzo de mil ochocientos cincuenta.

JESUS VEJAR.

El Alcalde 1°. Constitucional y Escribano Publico que firmamos, certificamos y damos fé, que el signo y firma que antecede es el que usa y acostumbra el Escribano Don Jesus Vejar en todos los autos que ante el pasan. Asi lo comprovamos en Tepic, á quince de Marzo de mil ochocientos cincuenta.

LORETO CORONA.
EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES,
TEPIC, JUNE 8, 1850.

I, E. L. Barre, acting Consul of the U. States, do hereby certify that the foregoing signatures are in the true handwriting of Loreto

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Corona and Eusebio Fernandez; the first, Alcalde 1°., and the second, a lawfully appointed Public Notary, in this city, and whose acts are worthy of all faith and credit.

{ SEAL } In testimony whereof I do hereby set my hand and seal of office this day above mentioned.

E. L. BARRE,
Acting Consul.

Filed in office, Jan. 30, 1855.

GEO. FISHER.
Secretary.

[No. 3.]

TRANSLATION OF C., P. L. EXHIBIT TO DEPOSITION OF JOSÉ MA LAFRAGUA.

MINISTRY OF FOREIGN RELATIONS, }
GOVERNMENT AND POLICE. }

MOST EXCELLENT SIR:

His Excellency, the Minister of Justice, in an official note of the 20th inst, communicates to me that which I copy below:

"MOST EXCELLENT SIR:

I have this day addressed to his Excellency, Don Vicente Segura, President of the Board for the encouragement of mines, the following:

'MOST EXCELLENT SIR:

Having laid before his Excellency the President, *ad interim*, your Excellency's note of the 14th inst., wherewith you were pleased to accompany me, with a recommendation, the petition of Señor Don Andres Castillero for the *fomentacion* of the quicksilver mine which he has discovered at the Mission of Santa Clara in Upper California.

His Excellency has been pleased to approve, in all its parts, the agreement made with said individual to commence the exploring of the said mine, and under this date the corresponding communication is addressed to the Ministry of Foreign Relations and Government for the issuing of the necessary orders with reference to what is contained in the eighth proposition relative to the granting of lands in that Department.'

I have the honor to transcribe it to your Excellency, that, in regard to the petition of Señor Castillero, to which his Excellency, the President, *ad interim*, has thought proper to accede, provided, that

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as a colonist, two square leagues be granted him upon the land of his mineral possession, you may be pleased to issue the orders referred.

I reiterate to your Excellency, &c."

And I transcribe it to your Excellency, that in conformity with the provisions of the laws and decrees relative to colonization, you may give Señor Castillero possession of the two square leagues above mentioned.

1846 God and Liberty. Mexico, May 23, 1846.

(Signed.) CASTILLO LANZAS.

To his Excellency of the Department of the Calitornias.

SEAL 4TH., { For the years 1850 and 1851. } ONE REAL.

I, Jesus Vejar, a Notary Public, hereby certify and attest that the foregoing authentic instrument, signed by his Excellency, the Minister of Foreign Relations, Government and Police, Castillo Lanzas, has been respected under that signature, and obeyed by the Mexican authorities that governed in Upper California in the year eighteen hundred and forty-six, according to insertions which the said authorities made of the said instrument in acts which they passed upon the subject of which they treat, and which I certify to have seen, and for this reason that signature in the said instrument should be esteemed as authentic and signed in the hand-writiting of his Excellency, the Minister, and as, also, by proceedings that have passed under my observation, Señor Don Andres Castillero recognized it.

And at the instance of the Messrs. Barron, Forbes & Co., I have placed hereon my signet, and sign it in Tepic, on this 1st day of March, 1850.

(Signed. JESUS VEJAR.

We, the undersigned, First Constitutional Alcalde and Notary Public, hereby certify and attest that the foregoing signet and signature which Don Jesus Vejar a Notary, generally uses in all the acts is that performed by him.

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This we verify in Tepic, this 1st March, 1850.

(Signed.) LORETO CORONA.

(Signed.) EUSEBIO FERNANDEZ.

A true and correct translation. Witness my hand this 30th January, 1855.

GEO. FISHER,
Secretary.

Filed in office, January 30th, 1855.

GEO. FISHER,
Secretary.

EXHIBIT "D., P. L.," ANNEXED TO THE DEPOSITION OF JOSÉ MARIA LAFRAGUA.

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* * * * * * * * *

Page 65. En el Estado de San Luis Potosi, se hallan en proporcion de los metales que se benefician y el azogue que se estrae, y en la Alta California se ha descubierto un criadero, cuyu ley sobrepuja á la de la mejor mina que se conoce, la de Almaden, la cual no produce mas de un trece por ciento, cuando la nuestra, en los ensayos practicados en el Colegio de Mineria de esta Capital, sube á un trienta y cinco y medio por ciento.

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Page 66. Yo recomiendo al Soberano Congreso que fijé su atencion en este ramo, haciendo de la esplotacion de nuestro azogue, una verdadera empresa nacional, cuya importancia no se puedo encarecer demasiado, bien sea creando un fondo, ó bien dictando otras medidas oportunas.

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Page 136. La Junta en 21 de Abril proximo pasado, pasó á la facultativa del Colegio unas muestras de cinabrio que presentó D. Tomas Ramon del Moral á nombre de D. Andres Castillero, vecino de la Alta California, con una esposicion en que pide se le auxilie para trabajar una mina que ha descubierto en la Mision de Santa Clara, conocido por los

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antiguos Indios, quienes sacaban de ella el bermellon para pintarse el cuerpo. Hecho el ensayo por el profesor de quimica resulta que los metales en comun produjeron la estraordinaria ley de 35½ por 100, lo que se participó al Gobierno en 5 de Mayo, manifestandole que se habia preguntado al Sr. Castillero cuales era los auxilios que necesitaba de la Junta.

Este Señor presento su solicitud en forma, y examinada muy detenidamente por la Junta, hizo sus proposiciones, en que esta convino, reducida á que se le franqueasen por entonces cinco mil pesos en numerario, ocho retortas de fierro, de las que mandó hacer la Junta para que serviesen en los reconocimientos hechos anteriormente, y todos los frascos para azogue que tiene en la negociacion de Tasco. El Sr. Castillero se obligó por su parte á entregar dicha anticipacion en azogue, á razon de cien pesos quintal dentro de seis meses de su salida en el puerto de Mazatlan. Este convenio fue aprobado por el Supremo Gobierno en 20 del mismo; pero á virtud de la declaracion hecha por los Estados Unidos del Norte, cuando iba ya á recibir la libranza sobre Mazatlan, el Ministerio pasó la orden de 19 de Septiembre de este año, mandando suspender todo pago del ramo de azogues a escepcion de los gastos alimenticios del Colegio y la Oficina.

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Page 146. No es la ocasion de presentar reunidos todos los trabajos de la Junta para corresponder á la alta confianza con que la honró el gobierno. Una parte de ellos van especificados en la presente nota, y los demos se hallan consignados en las memorias informes y multitud de comunicaciones que obran en ese ministerio. Por ahora unicamente se reducirá á asegurar lo que consta de eros documentos, á saber; que el espiritu de empresa se llegó á estimular en terminos de estarse esplotando minas de azogue en los principales Departamentos de la Republica, ya por companias ya tambien por particulares; que en el de San Luis Potosi, azogue que se estrae está en proporcion de la plata que se beneficia, en terminos de no necesitarse del estrangero; que en la Alta California, en el presidio de Santa Rosa, ha llegado á descubrirse un gran criadero, por el Sr. Andres Castillero, cuyos leyes son verdaderamente sorprendentes; pues resulta de los ensayes practicados en el Colegio de Mineria que las que dan los frutos comunes sube á un 35½ por 100, cuando los de la mejos mina que se conoce, que es la del Almaden, no para de un 13 por 100; y en fin, que por todos los datos que se han reunido, se puede esperar descansando en muy bucnos fundamentos que nuestros criaderos de azogues son mas que suficientes para habilitarnos de todo lo que se necesita para el beneficio de nuestras platas.

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Esta gran empresa nacional, la Junta no ha podido llevarla á cabo, porque se le privo de uno de sus fondos del 1 por 100 de la circulacion de la moneda sin sustituirle otro, y porque del que le restaba, solo ha podido dispone de menos de una tercera parte, pues el gobierno en los apuros del erario, ha usado de las restantes. El mal se agravó hasta el estremo lamentable de quedarse sin ninguno por la orden de lo de Mayo ultimo, que mandó suspender todos los pagos que se hacian por la hacienda publica. Los resultados funestos de tales determinaciones, la Junta no se detendrá á pormenorizarlos; ellos se hacen patentes por lo hasta aqui manifestado.

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Filed in office, Jan. 30, 1855.
(Signed) GEO. FISHER,
Secretary.

TRANSLATION OF "D., P. L." EPHIBIT TO DEPOSITION OF JOSÉ MARIA LAFRAGUA.

Translations of those portions of document marked "D., P. L." exhibited in the deposition of José Maria Lafragua, January 29th, 1855, therein marked as referent to the subject of the land claimed in this case.

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Page 65. In the State of San Louis Potosi, the minerals yield fifty per cent. of quicksilver, and in Upper California a criadero has been discovered whose base exceeds that of the best mine known, that of Almaden, which produces eighty-seven per cent., while ours in the assays made in this mineral, of this capital only ascends to sixty-five per cent.

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Page 66. I would recommend the sovereign Congress to direct their attention to this Department, making the exploration of our quicksilver a truly national enterprise, the importance of which cannot be too highly estimated, either by creating a fund, or adopting other convenient measures.

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Page 156. On the 21st day of April last, the Board transmitted to the faculty of the college a few specimens of ore which Don Tomas Ramon del Moral presented in the name of Don Andres Castillero, a resident of Upper California, with an exposition, in which he asks means for the working of a mine which he has discovered in the Mission of Santa Clara, known by the old Indians, who used to obtain therefrom vermilion to paint their bodies with. The assay having been made by the Professor of Chemistry, it was ascertained that the ores produced on an average the base of thirty-five per cent., which was reported to the Government on the 5th of May, with the representation that Señor Castillero had been asked what were the means he needed from the Board.

This gentleman presented his petition in form, and the Board having examined it very carefully, he made his propositions, to which the Board agreed, it having been resolved that for the present there should be furnished him five thousand in money, eight iron retorts of those which the Board ordered to be made to serve in the examinations previously made, and all the quicksilver flasks which it has at the establishment of Tasco. Señor Castillero obligated himself on his part, to pay the said advance in quicksilver, at the rate of one hundred dollars per quintal, within six months from the date of his departure from the port of Mazatlan.

This agreement was approved by the Supreme Government on the 30th of the same, but in consequence of the declaration made by the United States of the North, when he was *en route* to Mazatlan to cash the draft, the minister issued an order on the 19th September of this year, directing the suspension of all payments from the quicksilver department, with the exception of the alimentary expenses of the College and the kitchen.

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Page 146. This is not the occasion to present all the collected labors of the Board, to correspond with the high confidence with which the government has honored it. A portion of them are specified in the present note, and the rest are assigned to the memorials, reports, and the numerous communications which exist in that ministry.

For the present it will confine itself alone to the stating of what is contained in those documents, to wit: that a spirit of enterprise was stimulated at the time of the exploration of the quicksilver mines in the principal departments of the Republic, both by companies and by individuals. That in that of San Louis Potosi, the quicksilver which is extracted is proportionate to the silver that is wrought, so as not to need any foreign: that in Upper California, at the Presidio of Santa Rosa, a large *criadero* has been discovered

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by Señor Don Andres Castillero, the base of which is really wonderful, as it is ascertained by the assays made in the Mineral College, that that which yields an average per cent., ascends to 35 1-2 per cent., whilst those of the best mines that is known, which is that of Almaden, does not exceed 13 per cent., and finally from all the data that has been obtained, it may be expected, relying upon good reasons, that our quicksilver *criaderos*, are more than sufficient to furnish us with all that is necessary for the working of our silver mines.

The Board has not been able to carry this great national enterprise into effect, because it was deprived of one of its resourses, of the one per cent of the circulation of the money, without substituting it by another, and because it has only been able to dispose of two-thirds of the balance, as the Government, in its necessity for funds, has used the other two-thirds.

The evil was enlarged to the lamentable extreme of its remaining without any, by the order of the 10th of May last, which ordered the suspension of all the payments that were being made by the public Treasury.

The Board will not stop to particularise the untoward results of such determinations, they are made clear by what is here expressed.

A true and correct translation.

Witness my official signature, this 3d day of November, A.D. 1855.

GEO. FISHER, Secy.

Filed in Office Nov. 3, 1855

GEO. FISHER,
Secy.

"A., P. L.," EXHIBIT TO THE DEPOSITION OF ANTONIO SUÑOL, MARCH 19, 1855.

Sor. Alc^{e}. de 1^{a}. nomin^{or}.

Andres Castillero, Cap^{n}. de Cab^{a}. Perm^{te}. y residente hoy en este Departam^{to}. ante la notoria justificacion de V. hace presente, que habiendo descubierto una veta de plata con ley de oro, en terreno del rancho perteneciente al Sarg^{to}. retirado de la compañia presidial de S. Fran^{co}. José Reyes Berreyesa, y queriendo trabajarla en compañia, suplico á V. que arreglado á la ordenanza de mineria se sirva fijár rotulones en los parages publicos de la jurisdiccion para que llegado el tiempo de la posecion juridica, asegure mi derecho, segun las leyes de la mineria.

A. V. suplico, provia de conformidad en lo que recibiré merced y justicia admitiendo este en papel comun por falta del sellado correspondiente. Mision de St^{a}. Clara, Nov^{e}. 22 de 1845.

ANDRES CASTILLERO.

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Sr. Alcalde de 1a. nominacion del Pueblo de San José Guadalupe:

Andres Castillero, Capitan de Caballeria permanente, ante la notoria justificacion de V. comparesco y digo que entablando el mineral con anterioridad denuncié á ese juzgado he sacado á mas de plata con ley de oro, azogue liquido, en presencia de algunos concurrentes que podré citar en caso oportuno, y por convenir asi á mi derecho le he de merecer á V. que unido al escrito de denuncio se archive esta presentacion, no llendo en papel del sello por no haberlo.

A V. suplico provea de conformidad en lo que reciveré merced y justicia. Sta. Clara, Diciembre 3, de 1845.

ANDRES CASTILLERO.

No encontrandose en el Departamento de California, Diputacion de Mineria, y siendo esta la unica vez desde la poblacion de la Alta California, que se trabajo con arreglo á las leyes un mineral, y careciendo ademas de Juez de letras el segundo distrito, Yo, el Alcalde de 1a. nominacion, C. Antonio Ma. Pico, he venido acompañado de dos testigos para actuar por receptoria á falta de escribano publico que no lo hay, para dar posecion juridica de la mina conocida con el nombre de Santa Clara, en esta jurisdicion, situada en el rancho del Sargto. José Reyes Berreyesa, por que habiendo fenecido el tiempo que señala la ordenanza de mineria para deducir su accion el C. Andres Castillero y que otros pudieran alegar mejor derecho, desde el tiempo del denuncio á la fecha, y encontrandose dicha mineral con abundancia de metales esplotados, el pozo hecho con las reglas del arte, y produciendo la elaboracion de la mina abundancia de azogue liquido, segun las muestras que tiene el juzgado; y estando tan recomendado por leyes vigentes la proteccion de un articulo tan necesario para la amalgamacion de oro y plata en la Republica, he venido en concederle tres mil varas por todos rumbos, á reserva de lo que señale la ordenanza genl. de mineria, por ser trabajada compa. de lo que doy fé; firmando conmigo los testigos y quedando agregado este acto de posesion al cumulo del espediente que queda depositado en el archivo de mi cargo; no yendo puesto en papel del sello respectivo, que no le hay en los terminos de la ley.

Juzgado de Sn. José Guadalupe, Deciembre 30, de mil ochocientos cuarenta y cinco.

ANTONIO Ma. PICO.

De asa—Antonio Suñol.

De asa—José Noriega.

Filed in office, March 19th, 1855.

GEO. FISHER,
Secretary.

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["B." Translation.]

SEÑOR ALCALDE OF FIRST NOMINATION.

Andres Castillero, Captain of permanent Cavalry, and at presentt resident in this Department, before your notorious justification, makes representation, that having discovered a rein of silver, with a *ley* of gold, on the rancho pertaining to José Reyes Berreyesa, retired Sergeant of the Presidio Company of San Francisco, and wishing to work it in company, I request that, in conformity with the ordinance on mining, you will be pleased to fix up notices in public places of the jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter.

I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

Pueblo of San José Guadalupe, November twenty-second, eighteen hundred and forty-five.

(Signed) ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with two assisting witnesses, in the Pueblo of San José Guadalupe, on the 13th of January 1846.

(Signed) PEDRO CHABOLLA.

Assisting witnesses:
(Signed) SANSEVAIN,
(Signed) JOSÉ SUÑOL.

SEÑOR ALCALDE OF FIRST NOMINATION.

I, Andres Castillero, permanent Captain of Cavalry, before your well known justification, appear and say, that on opening the mine which I previously denounced in this Court, I have taken out besides silver with a ley of gold, liquid quicksilver, in the presence of several bystanders, whom I may summon on the proper occasion.

And considering it necessary for the security of my right so to do, I have to request of you, that uniting this representation to the de-

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nouncement, it may be placed on file, it not going on stamped paper, because there is none.

I pray you to take measures to this effect, in which I will receive favor and grace.

Santa Clara, December 3d, 1845.

(Signed) ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with the witnesses of my assistance, in the Pueblo of San José Guadalupe, on the 13th of January 1846.

(Signed) PEDRO CHABOLLA.

Assisting witnesses:
(Signed) P. SANSEVAIN,
(Signed) JOSÉ SUÑOL.

There being no deputation on mining in the Department of California, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws—and there being no *Juez de Letras* (Professional Judge) in the 2d District, I, the Alcalde of 1st Nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the Rancho of the retired Sergeant José Reyes Berreyesa, for the time having expired which is designated in the ordinance of mining, for citizen Don Andres Castillero to show his right, and also for others to allege a better right, between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this Court has; and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Re-Republic, I have granted three thousand varas of land in all directions, subject to what the general ordinance of mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this act of possession being attached to the rest of the Expediente,

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deposited in the Archives under my charge. This not going on stamped paper, because there is none, as prescribed by law.

Juzgado of San José Guadalupe, December 30, 1845.

(Signed) ANTONIO MARIA PICO.

Assisting witnesses:
(Signed) ANTONIO SUÑOL,
(Signed) JOSÉ NORIEGA.

I have received of Don Andres Castillero the sum of twenty-five dollars, on account of the fees for the possession of the quicksilver mine, which is in this jurisdiction, under my charge, named Santa Clara.

Court House of San José Guadalupe, December 30, 1845.

(Signed) ANTONIO MARIA PICO.

$25.

Writing of partnership executed by Don Andres Castillero, Captain of permanent Cavalry, with the Commanding General, Don José Castro, and the Senores Secundino Robles and Teodoro Robles, and a voluntary grant which the partners make perpetually to the Rev. Father Friar, José Maria del Refugio Suarez del Real, of a mine of silver, gold, and quicksilver, in the Rancho ef Don José Reyes Berreyesa, in the jurisdiction of the Pueblo of San José Guadalupe.

Art. 1. Don Andres Castillero, conforming in all respects to the ordinance of mining, forms a regular perpetual partnership with the said persons in this form: The half of the mine, which is that of which he can dispose, will be divided in three parts, in this manner; four shares to Don José Castro; four shares to Senores Secundino and Teodoro Robles; and the other four shares to the Rev. Father José Ma. R. S. del Real, as a perpetual donation.

Art. 2. Neither of the partners can sell or alienate any of his shares, so that he who may do so shall lose his right, which shall revert to the other partners.

Art. 3. The expenses shall be borne in proportion to the shares, a formal account being kept by an accountant, who will be paid from the common fund.

Art. 4. That prescribed by the ordinance of Mining being complied with in every thing, whatever difference may arise will be decided by the partners themselves.

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Art. 5. Don Andres Castillero will direct the labors, expenses, and works, and in his absence, the Rev. Father Friar José Maria R. S. del Real.

Art. 6. Of the products, no larger quantities will be taken out than are necessary for the arrangement of the negociation until the works may be regulated; and whatever the quantity may be, it must be with the consent of all the partners until the negociation may be arranged.

Art. 7. These agreements will be authenticated by the Prefect of the 2d District, Don Manuel Castro; the original document being deposited in the Archives of the district (*partido*), a copy certified by his Honor being left with the persons interested.

Mission of Santa Clara, November 2d, one thousand eight hundred and forty-five.

(Signed) ANDRES CASTILLERO.

For the Comd'g General Don José Castro,

(Signed) ANDRES CASTILLERO.
(Signed) JOSÉ MARIA DEL R. S. DEL REAL.

For the Senores Secundino Robles and Teodoro Robles,

(Signed) FRANCISCO ARCE.

It is a copy of the original to which I refer.
Santa Clara, December 8, 1845.

(Signed) MANUEL CASTRO,
(Signed) ANTONIO M. PICO.

COURT OF THE JUSTICE OF THE PEACE }
San José Guadalupe, Upper California. }

I certify in due form that the foregoing is a faithful copy made to the letter from its original, the "Expediente" of the mine of Santa Clara or New Almaden, which exists in the Archives under my charge, to which I refer. And in testimony thereof I have signed it this twentieth day of January, one thousand eight hundred and forty-eight.

(Signed) JAMES W. WEEKS,
Alcalde.

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BRITISH VICE CONSULATE FOR CALIFORNIA,
San Francisco.

I hereby certify that the signature to the above certificate is the true and proper handwriting of the person it represents, and that it is worthy of all faith and credit.

In witness whereof I have hereunto placed my hand and official seal this twenty-first day of January, one thousand eight hundred and forty-eight.

(Signed.) JAS. ALEXANDER FORBES,

Seal of H. B. M. Vice Consulate.

Vice Consul.

JESUS VEZAR, NOTARY PUBLIC.

I certify and assure that the last preceding signature of the Señor Vice Consul, Don James Alexander Forbes, is his own, which said Señor is accustomed to use, I having become acquainted with it when I knew him during his stay in this city, on the way to Upper California, by various acts which he executed in the house of Messrs. Barron, Forbes & Co.

And at the request of the same persons I affix my notarial mark and signature to this testimony, in Tepic, on the fifteenth of March, one thousand eight hundred and fifty.

(Signed.) JESUS VEJAR.

We, the Constitutional First Alcalde and Notary Public, who sign, certify and assure, that the preceding mark and signature are those which the Notary, Jesus Vejar, is accustomed to use in all the acts which pass before him. We thus prove it, in Tepic, on the fifteenth day of March, one thousand eight hundred and fifty.

(Signed.) EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America for this district, hereby certify that the signatures attached to the foregoing document are in the true hand-writing of the subscribers, who legally hold the situations therein representod, and are worthy of all faith and credit.

In testimony whereof I hereunto set my hand and seal of office,

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this first day of December, in the year one thousand eight hundred and fifty, in the city of Tepic.

(Signed.) G. W. P. BISSELL
U. S. Consul.

Seal.

Filed in office, Sept. 20, 1852.

GEO. FISHER,

"G," COPY OF NOTES OF SURVEY AND PLAT.

Boundaries of the land pertaining to the mine of New Almaden, Upper California.

Commencing at a live oak, blazed and marked with a cross, standing on the western side of the Arroyo de los Alamitos, near the lower crossing of the wagon road leading from the mine to the Pueblo de San José, the line runs along the lands of the Rancho de San Vicente, by compass, south 63 deg. 16 min. east, 15 chains and 50 links, to a rock surmounted by a pile of stones; thence south 7 deg. 41 min. east, 82 ch. 00 lks., to an oak, marked with a cross, on the summit of a high hill eastward from the mine; thence south 1 deg. 56 min. west, 281 ch. 80 lks., to the centre of the summit of a high conical peak, the northernmost of the two elevated peaks of the Sierra Azul, situated in a southeastern direction from the mine; thence north 66 deg. 41 min. west, 364 chs. 80 lks. to the centre of the high peak of the Sierra situated southwesterly from the mine, and called by the Indians "Umunhum;" thence north 27 deg.; east 227 chs. 50 lks. to a live-oak marked with a cross; thence north 19 deg. 18 min. east, 133 chs. 83 lks. to another large live oak, marked with a cross; thence north 61 deg. 46 min. east, 62 chs. 50 lks., to a sycamore, marked with a cross, and standing near the western bank of the Arroyo de los Alamitos; thence along the middle of said arroyo about 48 chs. 0 lks. to the place of beginning. Said tract of land containing 8883 English acres, or two Mexican sitios.

(Signed.) C. S. LYMAN,

Surveyor for the Mid. Dep't., Upper California.

Pueblo de San José, March 7th, 1848.

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OPINION OF THE BOARD, BY COMMISSIONER A. FELCH.

ANDRES CASTILLERO,
vs.
THE UNITED STATES.

For the New Almaden Mine, and two square leagues of land adjoining, in Santa Clara County.

The claim presented in this case is two-fold :

First, for the mine of quicksilver, known as the New Almaden Mine, alleged to have been acquired by the petitioner under the laws of Mexico, in December, 1845 ; and second, for two square leagues of land around the mouth of said mine, alleged to have been granted in colonization to the petitioner, by the Mexican authorities, May 20th 1846.

We shall consider each in its order.

1st. The right to the mine.

As to this part of the petitioner's claim, it is urged by the Law Agent of the Government ; first, that this Commission has no jurisdiction in the case of a mere mining right, however well established under the Mexican law, and therefore cannot adjudicate in the matter ; and secondly, that if adjudged to be within the jurisdiction of the Commission, the proof is not sufficient in the case to establish such right under the laws of the former Government.

The question of jurisdiction meets us on the threshold ; but, as the power of the Commission to take cognizance of the case depends upon the legal character of the petitioner's interest or right, I shall first examine the proofs by which it is sought to be sustained, and then inquire whether such claim is within the range of adjudication committed to this Commission by the Act of March 3d, 1851.

The petitioner presents the following documentary evidence :

First.—His petition directed to the Alcalde of first nomination, representing that he had discovered a vein of silver with a *ley* of gold, on the land of the rancho pertaining to José Reyes Berreyesa, and wishing to work it in company, he requests the Alcalde, in conformity with the ordinance on mining, to fix up notices in public places of the jurisdiction, in order to secure the right when the time for juridical possession should arrive, according to the laws on the matter.

This is dated November 22d, 1845. On the 3d of December a supplement to the petition is added, alleging that he had taken out of

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the mine, liquid quicksilver, which, in order to secure his right, he also wishes to add to the representation in his statement.

This is followed by a document signed by the Alcalde in these words:

"There being no deputation on mining in the department, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws; and there being no '*Juez de Letras*' (Professional Judge) in the 2d district, I, the Alcalde of first nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the rancho of the retired Sergeant José Reyes Berreyesa, for the time having expired, which is designated in the ordinance of mining, for the citizen Don Andres Castillero to show his right, and also for others to allege a better right between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this court has; and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have granted three thousand varas of land in all directions, subject to what the general ordinance of mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this act of possession being attached to the rest of the expediente deposited in the archives under my charge. This not going on stamped paper because there is none, as prescribed by law.

Juzgado of San José Gaudalupe,
December 30, 1845.

(Signed) ANTONIO MARIA PICO.

Assisting witnesses:
ANTONIO SUÑOL,
JOSÉ NORIEGA."

These documents exhibit the proceedings before the local officer where the mines are located.

The subsequent proceedings took place in Mexico, before the officers of the Supreme Government, and are shown by the records at the capital, sworn copies of which are given in evidence.

These proceedings were commenced by a communication from said Castillero, dated at the Mission of Santa Clara, February 19, 1846,

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which was followed by a second, written three days later, announcing his discovery of the mine, and transmitting to his Excellency, the President, some ores of cinnabar, and a little quicksilver.

He states that he was erecting a furnace, that the ores had yielded twenty per cent, and asked that an assay may be made by the proper officer, under the direction of the "Junta for the encouragement and administration of mining."

The assay was duly made, and the several reports incorporated in the record showed the most satisfactory and gratifying results, and the Junta applied to Señor Castillero to know "what kind of aid or protection he needs for the encouragement of his brilliant enterprise."

This information was communicated to the President of the Republic by the President of the Junta, on the 5th of May, and the receipt thereof, with the expression of the gratification of the President, was acknowledged by the Minister of Justice, to whose department the mining interests of the nation were then committed, by letter of the 9th of the same month.

This is followed by the proposal of Castillero, addressed to the Junta for the encouragement of mining, bearing date May 12th, 1846, in which he sets out his discovery, the proceedings in obtaining the assay by order of the Junta, the favorable result, and his desire to benefit his country thereby.

He adds,—"In virtue of this I have denounced and taken possession not only of said mine named Santa Clara, (afterwards called New Almaden,) but also of an extent of three thousand varas in all directions from said point.

"I have formed a company to work it.

"I have constructed the pit, and complied with all the conditions prescribed by the ordinance; the mine yielded ore with the notable circumstance that the specimens which I brought, and which have been assayed, have been taken out of the mouth."

His proposal is as follows:

1. That the Junta, in the act of approving the agreement, shall give him a draft on some mercantile house in Mazatlan for five thousand dollars.

2. He binds himself to repay the amount by delivery of fifty quintals of quicksilver, at one hundred dollars each, in Mazatlan, within six months.

3. The Junta shall put at his disposal certain retorts and flasks then on hand, and also a sum of money sufficient to pay for certain apparatus, which it was necessary to order, not exceeding one thousand dollars.

4. Fixes the prices of the retorts and flasks which should be furnished.

5. The price of the same, the premium on the draft on Mazatlan,

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and the money which should be advanced to pay for the apparatus to be ordered, were to be repaid in quicksilver delivered within one year at Mazatlan, reserving to the Junta the right to take one or more *acciones* in the mine, in part payment of the sum which might be due.

6. The Junta to have the preference in the purchase of all quicksilver in Mazatlan, at 100 dollars per quintal, while the company is being formed and during the period of one year.

7. The Junta shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities of California, in the same terms in which I now hold it.

8. It shall also represent the advantage of their being granted to me, as a colonist, two square leagues upon the land of my mining possessions, with the object of being able to use the wood for my burnings.

9. For the performance of the proposed contract, the applicant pledges the mine and its appurtenances.

This document was transmitted to the Minister of Justice, with a communication from the Junta, signed by its President, recommending in strong terms to the approval of the Supreme Government the entire proposition relative to the mine.

In regard to the proceedings in California, in the registration and denouncement of the mine, it is stated that "the posession has not been in accordance with the ordinance, inasmuch as there have been granted him 'pertenencias' to the extent of three thousand varas, which are equivalent to fifteen 'pertenencias,' agreeably to the second article of the eighth title."

And the Junta then proceeded to obviate this objection by citing the several laws applicable to the case of the discoverer of an absolutely new hill in which there was no mine open, and to the working of a mine by a company, associated with the discoverer; showing moreover the propriety, on account of the extent, and the peculiar frontier position of the department of California, of conceding to the first mine a large number of 'pertenencias' and citing the first article, eleventh title, for authority to grant to such company every favor and exemption which can be granted them according to the judgmcnt and direction of the Royal Tribunal of Mines, and without detriment to the public, or to the royal treasury.

As to Castillero's application for the grant to him, as a colonist, of the ownership of two square leagues of land on the surface of his mining property, the Junta decline to express any opinion.

With these documents before him, the President, *ad interim*, of the Republic, was pleased to approve in all its parts the agreement made with that individual, in order to commence the extraction of said min-

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eral, and the same was notified to the Junta for the encouragement of mining, on the 20th day of May, 1846; and as to the prayer for the grant of land, it was decreed that the proper order issue to the Minister of Relations for the proceedings, so far as his department is concerned, with the understanding that the Supreme Government is favorable to the petitioner.

This decree was communicated to the Minister of Foreign Relations on the 23d of May, that he might issue the orders corresponding.

The Mexican and Spanish law recognized two interests in real estate—the mining and the colonization interests.

The latter embraced the full enjoyment of premises for every purpose of cultivation, habitation, and of the various pursuits of civilized life.

The former secured the right to the mineral which was found deposited in the earth.

These were treated by the Government as distinct interests, and were conceded as such separately.

The methods of acquiring these interests by the individual citizen, were distinct; and the tribunals having the power to make concessions of them, were not the same. The laws known as the "Colonization Laws," directed as to one class of grants; the mining laws established the course of proceedings as to the other, and designated the tribunals which should have jurisdiction over the subject.

This distinction found in the law, is illustrated in the papers before us. Castillero sought to obtain a concession of the two interests; first, the mine as such, and secondly, two square leagues of land, to be held under the colonization laws.

We first enquire whether the proceedings developed in this record were such as were required by the Mexican law, in order to invest Castillero with the right to the mines, as recognized by that law?

At the time of the separation of Mexico, by revolution, from Old Spain, the code known as the Mining Ordinances of New Spain, adopted in 1783, with its subsequent alterations and amendments, was in force; and this, as well as other laws of the Kingdom, were continued in force under the new Government, so far as they were not inconsistent with the new order of things, or modified by law.

A translation of these mining ordinances of 1783, in full, is found in Rockwell's Spanish and Mexican Law, together with a part of the celebrated Commentaries of Gamboa on the Mining Laws of Spain; which, although published before the ordinances of 1783 was adopted, is a work of inestimable value at the present time.

By the ordinance of 1783, a Tribunal-General of Mines was established in the city of Mexico; and in the departments, Deputations of Miners, who had exclusive original jurisdiction in mining affairs.

In order to acquire the right to a mine newly discovered, the discoverer must present a written application to the Deputation of Mines

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in the district—or if there be none in the district to the nearest thereunto—setting out certain particulars in regard to himself and the mine discovered; the proper registry was required to be made by the Deputation and their clerk; the written statement was then returned to the discoverer, and notices thereof posted in certain public places.

Within ninety days the discoverer was required to open the mine, so registered, to the depth of ten varas; it was to be immediately examined by one of the deputies and the clerk, or two assisting witnesses, and by the mining professor of the Territory, taking an accurate account of the developments, in order to add the same to the entry in the register.

This was followed by the act of possession, which was immediately to be given to the discoverer by the proper officer, in the royal name, measuring him his portion, and establishing his limits.

By these proceedings, known as the registry, the legal right of the discoverer of a new mine was secured therein.

By the Constitution of Mexico, and by the subsequent decree of May 20th, 1826, the Tribunal-General of the Mines was established.

In these, nothing is said of the local deputations, and it may be a question whether or not it was intended to abolish them.

The subsequent decree of December 2d, 1842, makes another provision on the subject.

It requires the Governors of the Departments, in concert with the Departmental Juntas, and with the approval of the Supreme Government, to establish in each the number of tribunals of the First Instance which are necessary within the limits, and provides for the election of three Territorial Deputies, to be elected in the same manner as prescribed by the ancient ordinance of mining, and assigns to them substantially the same powers and duties.

This decree also provides that:

The second and third instances which may arise, shall be proven and decided in the Superior Courts of Justice of each respective department, and in the courts designated by the laws, or which shall be hereafter designated.—[*Rockwell*, 598—603.

This decree allows, by its provisions and its preamble, that the deputations provided for in the ordinance of 1783, were either regarded as abolished altogether, or at least that they did not generally exist in the districts.

It shows also, a discontinuance of the old mining districts in which the deputations formerly held jurisdiction, and provides for a new division of the departments, and the establishment of such number of tribunals of the first instance, composed of deputies, as the Government thereof might direct.

The proceedings before the Alcalde appear, by the record before us,

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to have been, in form at least, substantially in accordance with the law relative to registration.

Several objections are urged to the validity of these proceedings, the principal of which is that they were had before an Alcalde, and not before the mining deputation.

From the record made by the Alcalde, and from other proofs made in the case, it appears that in the whole department of California there was no mining deputation, or special mining tribunal of any kind; none had been appointed here under the ancient law, and no assignment of the number of the tribunals in this department had been made under the decree of 1826.

Gamboa treats the subject of registration and denouncement as judicial in its character, and one, under the laws of the Indies, in which the Justices of the Departments, Chief Alcaldes or Mayors, and, by way of appeal, the Royal Ordinancias, have cognizance.—[*Rockwell*, 359, 177.

By the Royal Ordinance of 1584, the new office of Administrator-General, and an Administrator for each department and mining district were established, and full and exclusive jurisdiction given them over the entire subject of mines.

In Mexico these officers were never appointed.—[*Rock.* 175.

Gamboa holds that, in default of the officers named in the law, in order to guard against the serious consequences which might otherwise ensue from the important interests involved in mining: the ordinance ought in this, as in all other respects, to be maintained and observed in that kingdom, agreeably to the rules of the municipal laws.

The same ordinance committed to the charge of the general and special administrators, to be appointed under its provisions, the cognizance of certain specified subjects growing out of the mining interests, and expressly prohibited the ordinary tribunals to entertain jurisdiction of them; yet the same eminent commentator declares that in the Indies, where these officers are wanting, the proceedings are to be had in the first instance before the justices, subject to appeal to the Royal Audencias. *Rock.* 357.

The same ordinance provides specifically that the discovery of a new mine shall be registered before the mining justice within whose jurisdiction it shall be situate, and in the presence of a Notary, who shall send an authenticated copy of the registry to the Administrator, in order that the same may be noted and entered in the book of registry.

The mining Justice or Judge was the officer to whom the ordinance committed specially this subject of registry; but in the district where no such officer existed, Gamboa declares, in relation to the duties devolved specially on this officer by the ordinance, that the other Justices must act in the matter. *Rock.* 362.

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It thus appears that under the ancient ordinance this whole subject of registry, denouncement, and mining jurisprudence generally, was committed to administrators and mining Justices.

No administrators were ever appointed in New Spain, and in many portions of the country there were no mining Justices or Judges.

And in the portions of the country where neither existed, the ordinary judicial officers were held to have full jurisdiction over the subject. Such was the law when the new ordinance of 1783 went into operation, which established the new tribunal of mining deputations, and committed this subject to their adjudication.

But in many portions of the country, of which the department of California was one, these officers were never appointed; in such a case it would seem most natural, if not a legal necessity, that cognizance of such a subject should continue to be exercised by the ordinary justices.

Strongly corroborative of this view of the subject, is the principle recognized throughout Spanish and Mexican jurisprudence, to the effect that in the absence of the higher officer the next in grade succeeds to the jurisdiction; and that when cognizance of a particular matter is given to a special tribunal not being in existence, the matter reverts to the ordinary tribunal as a matter of course.

On this subject, Peña y Peña, in his "Practical Forensica Mejicana," vol. 3, p. 53, says: "The ordinary jurisdiction is the most advantageous of all, for it is the most ancient, the most ample, and the most to be favored; the fountain and the mother of all the rest, that which is liable to no motive of partiality; that which therefore ought not to be strictly construed, and in case of doubt is to take precedence of all others."

And again, in the same volume, page 371, he says: "A special tribunal is so called, in contradistinction to the ordinary, which is established for every class of causes and persons, so that every special tribunal comes to be an exception from the ordinary tribunals.

Hence it is, that the exception being removed, the general rule remains in force, and that the special being wanting, its jurisdiction returns as it were to the fountain, the ordinary tribunals; and it reverts to them by the very nature of things, without any necessity that the authority of the suppressed (or wanting) tribunals should be given to them *de novo*."

A fortiori, when a new tribunal was established to take cognizance of a matter previously belonging to the ordinary justices, it would seem that the latter might act until the new tribunal was established.

And such seems to have been the practice in Mexico in those districts where the deputations were never established under the ordinances of 1783.

Two witnesses, Domingo Danglada and Francisco de Leon, testify

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to their familiarity with the proceedings in such cases in Mexico, and declare that since the establishment of the independence of that country, proceedings in the registry of a new mine are had before the Judge of the First Instance, or where there is no such Judge, the nearest Alcalde.

In California, where there was neither Judge of the First Instance, nor Escribano, the Alcalde acted in the capacity of the former. 1 *Cal. R.* 220.

It is claimed, further, that the right of Castillero to the mine must be declared invalid on account of his failure to perform the conditions imposed by ordinance—such as paying damages to the owners of the soil, the payment of a percentage of the product of the mine to the government, not commencing the work of the mine within six months, or a failure for four months to prosecute the working.

The testimony shows that the process of working the mine commenced in December, 1845, and has been continued to the present time without interruption, and there is no evidence tending to show a want of compliance with any duty imposed by law on the petitioner.

We cannot presume a forfeiture.

Under the facts presented in this case, and with the view of the law above expressed, I should feel great reluctance in declaring the proceedings before the Alcalde, in the registry of the mine, invalid.

There is no claim that the rights of any individual citizen were infringed by the act, and the only question is whether the conscience of the Mexican Government was bound to recognize the right of Castillero to the mines as established by it.

I cannot but so regard it, and the evidence of the subsequent recognition of the rights of Castillero by the highest officers of the Supreme Government, to which I shall again have occasion to refer, shows that it was evidently so regarded by them.

II. But, secondly, there is another view of the subject which presents itself, tending to the same result.

The ordinances above referred to contained the rules of proceedings as to the mines of every kind; but quicksilver mines were the subject of frequent special ordinances, both under Spanish and Mexican jurisdiction.

By the ordinance of 1783, quicksilver mines might be registered by the new discoverer like other mines; but it was on the express condition of giving an account of them to the viceroy, and to the subdelegate of quicksilver mines of Mexico, in order that it might be

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determined whether they should be worked on account of the Royal Treasury, making some equitable reward to the discoverer, or by the latter, he delivering all the quicksilver which he might extract into the royal store-house, under stipulated terms and prices. *Rock.* 54, 131.

Previous to the date of this ordinance, the sale and supply of quicksilver to the silver mines in Mexico, was a royal monopoly.

It was sent by the government of old Spain to officers appointed here, and by them distributed among the mines at fixed prices and according to established rules, while all importations, and traffic in the article on private account, were prohibited under the most severe penalties.

The supply of this article, so indispensable in the working of the mines of gold and silver, came from Almaden, in old Spain, and the new mines of Peru, while the working of quicksilver mines in New Spain was prohibited.

Three instances are mentioned by Gamboa, where such mines were discovered, and the working of them commenced, when the authorities interposed and caused them to be stopped up.

These instances occurred in 1718, 1730 and 1745, and in two of them the orders of prohibition were approved by the king. *Rock.* 139.

By the ordinance of intendants of 1803, the office of comptroller was continued in Mexico, in order to carry out the ordinances for the distribution and sale of the prohibited article. *Rock.* 395.

In 1811, the general and extraordinary Cortes, by decree, reciting the evils resulting from the monopoly of quicksilver, and from the provision in the ordinance of 1783, reserving the right of the government to work all newly discovered mines of it on its own account, repealed these provisions, making it an article of free trade, and exempt from all taxes, including the fifth, which was previously required to be paid by the miner.

This decree further recognised the right of discovery and working of such mines by individuals, with the right of acquiring a title thereto, under the general regulations relative to mines. *Rock.* 396.

On the restoration to the throne of King Ferdinand VII, this, among other decrees of the Cortes was declared null and of no effect.

By a subsequent Royal decree, proclaimed June 29th, 1821, in which the mines are freed from certain duties, provision is still made for continuing the supply of quicksilver to the Mexican miners, through the officers having charge of that subject. *Rock.* 407.

It is doubtful whether these two last mentioned decrees had ever any practical operation in Mexico.

After the declaration of independence, the Sovereign Provincial Committee, then exercising the powers of the government, on the 22

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November, 1821, abolished many of the impositions on the business of mining generally, and declared quicksilver entirely exempt from tax, whether it proceeds from Europe or Asia, or be drawn irom the mines of the empire, "Mexico," and the same provisions were re-enacted by the Sovereign Constituent Congress, by decree of 13th February, 1824. In the same year the Congress gave to Don Juan B. Binnon, the exclusive right to work quicksilver mines of the Territory of the Republic, for the five years preceeding July 24th, 1831, without prejudice to the right of those who might have acquired such mines at the commencement of said term. *Rock.* 597. By decree of May 20th, 1826, the Tribunal General of Mexico, was abolished.

On the 12th May, 1838, a premium of five dollars on each quintal of quicksilver imported, not French property, was given by law, to continue during the blockade by the French, and six months thereafter. *Rock.* 598, 601.

But the most important decree on this subject is the edict of Gen'l Bravo, then President of the Republic, made December 2d, 1842, establishing the "Board of Encouragement and Improvement of the Mining Corporation."

To this Board was committed the economical and faithful management of the mining fuuds, and they were specially required to propose to the Supreme Government a regulation determining the cases and modes in which the working of quicksilver mines in the Republic is to be encouraged by rewards, or in any other way promoted.

They were to have charge of the fund arising from the distribution of quicksilver, as provided in the edict, and in the management, preservation, and safe-keeping of the stock of quicksilver itself.

The Board is limited in the disposal of the funds in their charge to the objects specified in the edict, and to such as should previously be approved by the Government. *Rock.* 603, 605.

A decree of Santa Anna, of the 24th May, 1853, declares that quicksilver shall be sold throughout the nation without permits, passes, or other custom house papers, and that derived from the possessions of the Republic shall be subject to no general or municipal impost, and that $25,000 shall be granted to each of the four first proprietors who should extract in one year from the mines of the Republic 2,000 quintals of liquid quicksilver.

It also provides for a premium of five dollars for each quintal which should be produced from these mines within three years, and exempts the laborers in such mines from military duty and personal taxes. *Rock.* 609.

By decree of October 7, 1823, foreigners were authorised to hold shares in mines, for the working of which they should advance money to the proprietors; and by that of March 11, 1842, their privileges were so enlarged as to entitle them, in certain cases, to acquire own-

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ership of mines (including quicksilver) of which they might be discoverers, in conformity with the ordinances on the subject; and by decree of July 12, 1842, the right to acquire property therein was given to them, when they restored old mines which had fallen into disuse or been abandoned. *Ib.* 610, 611, 613.

The decree of September 23, 1843, is the last which it will be necessary to cite, and this is the more important in the case under consideration, as it defines more clearly the powers of the Board for the encouragement of mining, before whom the proceedings were had, in the city of Mexico, on which the claimant bases, in a great measure, his claim. *Ib.* 618.

The decree requires the Board to appoint a Commission in each department of the Republic to explore and examine the quicksilver mines situated therein, and to report whether there are any mines of quicksilver there, which have been or which can be worked, designating those which are best, their present condition, the work necessary to put them in order, the alloy contained in the yield which might be produced, and the cost of extraction and working.

The Board of Encouragement, in view of such reports, was authorised to decide upon the places which should be selected for these mines, and the sum which should be expended in putting them in operation.

Two methods for rendering aid out of the funds at their disposal, in the opening and working of the mines, are specified in the decree.

The first is by a loan of the funds necessary for the purpose, at the usual interest of six per cent., under an agreement that the same shall be returned at a specified time, the same to be secured by bond, to the satisfaction of the Board, to be invested exclusively in the business in question; and for this purpose the Board should have the power to appoint a supervisor of the mine, who should be paid by the owner thereof.

The second method was by furnishing all the necessary supplies for working the mine, taking the exclusive charge, and making distribution to the owner of his share of the profits.

The Board was required to draw up a regulation for supplies according to the basis of these two methods, submitting the same to the Government for its approval.

It does not appear in the case that any commission was ever appointed for the Department of California under the decree, and from the short time which elapsed between the date of it and the discovery of the New Almaden mine by Castillero, it is almost certain that no such examination had been made.

It is also equally certain that the proceedings had by the Board for the Encouragement of Mining, on the application of Castillero and by the Supreme Government, on their official report, was under the provisions of this decree.

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The Board decided upon the importance of working the mine, and on the propriety of making advances from the funds at their disposal to Castillero for that purpcse; they invited proposals from him as to the advances necessary, and transmitted them according to the 9th Article of the decree, to the President, for his approval; and that officer, by his decree thereon, approved the same so far it related to the opening and working of the mine by Castillero.

In my opinion, this operated as a contract under the law.

It is so stated to be in the decree of approval by the President, and in a report by Lafragua, Minister of Relations to the Mexican Congress in 1846, extracts from which are made evidence in the case, authenticated by the testimony of said Lafragua, it is clearly shown that both the Junta and the Government regarded it as a complete and binding contract; and it is also alleged therein that Castillero was on his way to Mazatlan to cash the draft specified in the agreement, when the war with the United States broke out and compelled the suspension of payments from the fund.

In one respect the proposition of Castillero differed in letter from the terms of the decree under which it was made.

That decree contemplated that where money was advanced to the discoverer, to enable him to work a mine, the fund should receive an interest of six per cent. on the sum advanced.

In this case, the whole was to be paid in quicksilver, delivered at Mazatlan, within a limited time, at the stipulated price of one hundred dollars per quintal.

In their communication to the Government the Board remark upon this, and add, that it cannot be doubted that the proposition affords greater advantages to the fund than the said interest.

The Board was charged with the purchase of quicksilver, and with the distribution of it among the gold and silver mines of the Republic, at cost and expenses.

The furnishing of quicksilver to the Board at a point where it was needed for use, was even more advantageous than the payment of coin, and it was competent for the Board, with the approval of the Government, to stipulate to receive both principle and interest in that article. The quicksilver to be delivered at the price stipulated, was considered by the Board, and also by the President in his approval, as equivalent in value to the sum to be advanced and the interest thereon; and the contract required it to be received therefor. Considering the ample powers entrusted to the Board and the President, I think the terms of this contract are within the scope of their authority, and cannot be invalidated on the ground of a departure in this respect from the terms of the decree.

This brings us to the question whether this action of the Junta and the President, could make valid the rights of Castillero in the mine

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claimed to have been acquired by the registration before the Alcalde, if the same was informal, and without authority, or if not, whether these proceedings were sufficient to establish his right to the mine, without a formal registration before the local authorities.

The Junta was not an appellant tribunal. It had no authority to review the proceedings of any local officer, and to affirm or disaffirm his decision.

Nor does it appear to have had any authority in cases of registration or denouncement, as known to the laws in existence at the time of its organization.

If registration before the Alcalde was not valid, the Junta had no power to make it so by virtue of any authority to review and affirm the acts of the Alcalde.

But in my opinion, although not an appellate power to review the acts of the Alcalde, it was sufficient, with the approval of the Government, to establish the rights of Castillero in the mine, without a previous official registration before the local officer.

Registry was nothing more than the presentation to the proper officer of a written description of the person who had found the mine, and the place where it was situated, with an exhibition of a specimen of the ore, and a claim of the rights of the discoverer therein.

This was followed by the registry thereof made by the officer, and the subsequent assignment of boundaries and giving possession. *Rock.*, p. 173.

This simple act perfected in the discoverer all the right in the mine which the citizen could ever acquire. The right of every one in this simple manner to possess the mines, is what is meant by the saying often repeated in the books, that the mines were common to all; the tribunal was usually at the door of the discoverer or denouncer; the process without expense; the proceedings with little formality, and the interest, once acquired, was held under the terms of decrees and customs well known to all.

But this method of acquiring the right to a mine, might not be, and perhaps never was, the only one by which the miner's right might be secured. While the mines continued a part of the royal prerogative, the method of acquiring them was subject to be changed or modified at any time by the decree of the King.

And after the independence of Mexico, though the old laws remained in force, when not contrary to the new order of things, or expressly annulled, the sovereign power of the new nation might at any time have changed the manner of acquiring such rights.

Such I regard the effects of the decrees passed subsequently to the independence, and especially of those of the 2d of December, 1842, and of the 25th of September, 1843, establishing and prescribing the powers and duties of the Board for the Encouragment of Mining.

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The policy of the Royal Government of Spain was to monopolise the supply of quicksilver for the mines in Mexico, to prohibit all importation by others, and all traffiic in it by individuals, and finally to interdict the opening and working the mines of it which might be known throughout Mexico.

When the independent government was established, the policy in Mexico was changed. It was then an object to render all importations, especially from Old Spain, unnecessary; and in order to obtain the indispensable supply for the working of the gold and silver mines, to give every inducement which the Government could afford, to discover and open, and render productive, the mines of quicksilver.

Hence the decrees making quicksilver a free article of commerce, and exempt from all duties, whether imported or obtained from the mines of the country; the allowance of a Government premium of $5 per quintal; the raising of funds from specified sources for the purchase of quicksilver, to be distributed among the mines; the exemption of the miners from duties, taxes, and arrests: the creation of officers to take charge of the subject, and to use money to promote the working of such mines.

To the new tribunal, the Board for the Encouragement of Mines, was especially committed the charge of determining, with the approval of the Government, the manner of obtaining quicksilver, and the cases and modes in which the working of quicksilver mines in the Republic should be encouraged, by rewards, or in any other way promoted.

By the decree of September 25th, 1843, the Board was authorized to decide upon the places which should be established in preference, and the sum which should be advanced to put the establishments in operation, the same to be approved by the Government; and the two methods of furnishing supplies—first, by an advance of the necessary amount, at an annual interest; and second, by becoming supplier of the mine, directing its operations and sharing the profits—show both the anxiety of the Government to open new mines of that metal in the Republic, and the broad discretionary powers over the subject given to the Board.

All the mines in the Republic which had not already been acquired by individuals, agreeably to former decrees, whether on the National domain, or on lands ceded under the colonization laws, belonged to the nation.

Commissioners were appointed to explore and discover them, and it can scarcely be doubted, if such were newly discovered, to which no individual rights had attached, the Board had full power to arrange for opening and working with any individual, and upon any terms authorized by the law and approved by the President.

I do not suppose, in such a case, that they were required to make a registry before the local authority, before such arrangement could be made.

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None but the discoverer could proceed to make a registry, and it seems to me preposterous to say that the Board, the officers of the Government, could not make a contract with an individual to work a mine under the terms of the law, which should be binding on the Government, unless a registry was had before the local authorities in the first place.

The Board might contract for the working of the mines for five, or ten, or fifty years, on certain terms.

This is as much the act of the Government, and would seem to transfer the Government right to the mine to the contractor, as surely as the proceeding in registration transfers to the discoverer the precise interest in the mine, which the law declared he should obtain by his registration.

Nor do I think there is anything to prevent an arrangement, under the terms of the decree, with the new discoverer of a mine, upon the proper evidence being laid before the Board, to work the same, although he has not proceeded to a registry in the place of its locality.

If, through fraud or misapprehension, by chance, individual rights previously acquired should be infringed, in such a case the party would not be without a remedy; but where, as in the case before us, no such infringement is suggested, the Government itself would be bound by its agreement with the contract.

From the very nature of the case, such a contract made with the national authorities, upon a subject-matter recognized to belong to the nation, implies a possession of, and a right in, the mine.

That interest would be such as is specified in the contract, and where that is silent as to the character and nature of the tenure, the laws and recognized customs of the country as to such right, must govern.

The right to contract for the working of a mine, on such terms as the Board, with the approval of the Supreme Government, might see fit, necessarily implies that the contractor might receive an interest in the mines different from that secured to the new discoverer by the act of registration. The size of the mine might be enlarged, the work of opening and working it be modified, and the multifarious and minute directions by which the right of the new discoverer under a registration were burdened and restricted, might be modified by the contract in any of those methods which the discretion of the public officers should dictate as the most effectual to render the mine productive.

That this was the design of establishing the Board, and of giving full power over the mines, which are specified in the decree, I cannot doubt.

But let us suppose that a contract for the working of a mine can

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confer no right in it to the contractor, who is the discoverer, unless he first registers that discovery in the proper locality.

The present case may illustrate most fully the consequence.

In the locality of San José there was no person, but an Alcalde, to whom the discoverer could apply for registration, and the Law Agent argues upon us that he had no authority, and that his act is therefore totally void. There were other districts, also, where the officers specially designated by name in the regulation of 1783, for the purpose, were not in being. Admit that in all these no person was authorized to make such registrations, and in California, where nothing but the curse of blindness, it would seem, could prevent the discovery of the richest mines at almost every step, no registration could be made, and consequently no individual could entitle himself to work any mine which he might have discovered.

Can it be possible that the Board, who were required to encourage mining everywhere throughout the Republic, could here do nothing to foster it when new mines were discovered; when premiums were offered for every pound of quicksilver produced in the country? Was there no right in any of the executive officers of the Government, to arrange for the rich supply which the mine afforded, simply because no officer at the spot could make a registration, or entertain proceedings for a denouncement? With the duty imposed on the Board to send a commission into every department to examine and explore scientifically in search of quicksilver mines, and to report fully on the subject of their value, and the expense of working them, can it be, that however rich might be the deposits discovered, no contract for working them could be made, for want of officers to make the registration? Or that, with money at their command, which the Board was authorized to advance for the purpose, with full powers to contract at the discretion of themselves and the Government, the great object which lay at the bottom of the Mexican political economy, and for which more than any other, they provided by law, the supplying of quicksilver for the working of the mines, must, for this reason, prove abortive?

In my judgment, the provisions of these enactments are not thus inert and inoperative.

I think the powers of the Board, with the approval of the President, were amply sufficient, whether Castillero had obtained a registration of his discovery or not, to make with him a contract to work the mine according to the terms of the decrees of 1842 and 1843, and that said contract was binding on the Mexican Government.

The rights which it secured to him were such as are specified in the contract, and where that is silent they are such as the laws and cus-

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toms at that time recognized as belonging to a mining possession, acquired in the usual manner by registration or denouncement.

In either aspect of the case, I think the petitioner has established his right to the mine.

III. The next inquiry is whether the interest thus acquired is of such a character as to bring it within a class of subjects over which this Commission has jurisdiction.

This must depend on the character of the interest or estate which Castillero took by the proceedings.

The Act of Congress of March 3d, 1851 limits the jurisdiction of this Commission "to persons claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government;" and requires the Commission to decide upon the validity of the said claim, entering therein a decree of confirmation or rejection.

The right in the mine which was given to Castillero by the contract, is the same as that which was secured to the discoverer under the Mexican laws by a registration; whether he held by virtue of the registry before the Alcalde, or under the contract, then, the estate was the same.

What was the interest which was vested in the discoverer then by the act of registration?

In Spain the mines, wherever found in the Kingdom, were the property of the Royal Crown.

Two interests, as I have already said, were recognized in land, which were different in their character, and disposed of as distinct interests and by different officers, yet both connected with and inseparable from the realty; the one carrying the enjoyment of the land for agricultural and all domestic purposes—the other securing the mineral deposit in the earth, with the right to work the same in the manner designated by law.

The former right was secured to the individual citizen by grant under the colonization laws; the latter by registry or denouncement.

The colonization grant gave the grantee no right to the mines hidden in the soil, nor had he any preference over a stranger in acquiring a right to them.—*Rock.* 49, 43.

In the ordinance of 1783, the interest in the mines acquired by the citizen is declared to be "in property and possession in such manner that they may sell, exchange, (pass by will either in the way of inheritance or legacy) or in any other manner dispose of all their property in them, upon the terms on which they themselves possess it, and to persons legally capable of acquiring it."

The interest acquired by the discoverer, under his registration, is spoken of in the ordinance as a grant; and he is said to acquire, with the right to hold for mining purposes, the extent of land described in

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the ordinance, and which shall be marked out, and possession given with due formality.

Foreigners are prohibited "from acquiring or working mines as their own property;" but to all subjects "the King grants the mines of every species of metal," under the condition of the payment to the royal treasury of the proportion of metal reserved thereto, and that they shall work the mines subject to the provisions of the ordinance.—*Ib.*, 49, 50, 55.

Escreche describes grants to miners as "made for an unlimited time, and so long as the grantees comply with the lawful conditions they may dispose of the right thereto, and of the products thereof, as of any other property."

Throughout the ordinances and laws on the subject of mines such a right is denominated "property," and the process of denouncement or registration is said to be "acquiring the mine." The boundaries once fixed must remain forever, unless changed by due competent authority.

The holder of such an interest is variously denominated the owner of the property, the "mine owner," and all the terms which may imply complete ownership of the mines, subject only to be defeated by violation of the requirements of the mining laws which everywhere abound.

Gamboa discusses at length the right of the Crown to the mines, and the character of the interest conveyed to the subject therein by the discovery and registration of a new mine, or the denouncement of an old one.

These, he says, give an interest merely, and not a separate and absolute property in them, and which authorizes him to deal with them in such manner only as shall be consistent with the regulations of the ordinances.

And although the grant gives a right of property, yet it only amounts to a cession of a partial interest, and not to an absolute transfer, the supreme right of property remaining vested in the Crown.—*Ib.* 130.

By the laws of Castile, the mines were granted in possession and property to the citizen, with power to dispose of them as of anything of their own.

The existence of the right to the mines in the Crown is easily reconciled with the exercise of a right of property over them on the part of the subject, who has secured a right in them by proceeding under the law of registration or denouncement.

In fact, such individual right is derived from the crown through the ordinances, and is not only consistent with it, but depends upon it.

This grant of the sovereign, therefore, continues Gamboa, conveys to his subjects a direct and beneficial right of property.

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It must follow beyond dispute, as a consequence of their being made over to the latter, with power to dispose of them as of a thing of his own, that all the incidents of property must attach in favor of the proprietor, and that they may therfore be exchanged, sold, leased or alienated, by contract, donation, or inheritance; may be given as a portion in marriage, or may be charged with rent. *Ib.* 131, 133.

The numerous laws relating to mining, impose on the miner many onerous duties in the manner of working his mine, requiring large outlays of capital, with a view to make permanent improvements, necessarily implying the permanency of the interest which he holds in the works.

This property is subject to but two conditions: first, paying the dues to the royal treasury, and secondly, conforming in the management of the mining operations to the requirements of the ordinances.

While the miner complied with these terms, there was no provision by which he could be deprived of his property.

Government itself could not deprive him of his inviolable right.

Under the government of Mexico, after the establishment of Independence, the condition of the miner, in reference to his interest in that kind of property, was made better than under the old regime, by freeing him from payments in the public treasury, and granting him a premium on every quintal of quicksilver produced from his establishment.

The mining right was also accompanied with all the privileges of occupying sufficient of the surface of the land for the extensive working of the mine beneath, and for the establishment of the necessary permanent buildings for the smelting of the ores, on payment to the proprietor of the damages assessed by the persons appointed for their asssessment.

The interest of the miner who acquired his mine by registration or denouncement, was clearly recognized by Spanish and Mexican law as one of the most useful and sacred estates which the citizen could acquire or hold.

It was not a mere license to carry away metal, but a fixed right of property in the deposits, with the fullest authority for excavation beneath, and occupancy on the surface for the needed *hacienda*.

If it be said the right was held subject to forfeiture, if the mines were not worked according to the requirements of the laws, it is answered that these were conditions subsequent, and the estate continues good until a breach of the terms of the grant.

The colonization grant is often subject to conditions subsequent, of a character as stringent as that attached to the mines, yet until a forfeiture is proved, the estate of the grantee is always held good.

By the first act of our own Congress, providing for the sale of lands, one-third part of the mines of all gold, silver, lead, and copper,

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were reserved to the United States, for the future disposal of the government.

This reservation was not retained in subsequent acts, and an American patent is now understood to carry a title in fee simple to the land and all the metals which lie beneath the surface.

Spain and Mexico, on the contrary, recognized the two interests as separate and distinct in the premises, and granted them as seperate estates.

Both interests partook of the realty, were inseparable from, and constituted a part of the land itself.

The right of the miner was "property," as much as that of the colonist, and was as much recognised and protected by the treaty of Guadalupe Hidalgo.

The mine owner was as much a person claiming lands by virtue of a right or title derived from the Spanish or Mexican government, as he who claimed under a colonization grant.

The latter held the premises subject to the title of the owner, and the former must enjoy his privilege without infringing the right of the latter.

Such an estate existing at the time of the cession, I cannot doubt is protected as property by the treaty; and I think it equally clear, that such a claim is within the description of cases upon which this Commission has authority, and is required to adjudicate.

As to the duty of the claimant in the performance of the conditions contemplated by the Mexican law, or the consequences of a failure to continue to perform them, it will be for another tribunal to decide, if the occasion should ever be presented.

But it has been strongly pressed upon us by counsel, that the Supreme Court of the United States have decided, in Fremont's case, that such a claim is not within the jurisdiction of the Commission.

Fremont's claim was based on a grant under the colonization laws.

Subsequently to the grant, mines of gold and silver were discovered on the premises, and the Attorney General contended that this rendered the grant void, and the claim should therefore be rejected.

After declaring that, under the law of Spain, the discovery of a mine of gold or silver did not destroy the title of an individual to the land granted, the Court proceeds as follows:

"The only question before the Court, is the validity of the title; and whether there be any mines on this land, or if there be any, what are the rights of the sovereign in them, are questions which must be determined in another form of proceeding, and are not subjected to the jurisdiction of the Commissioners or of the Court, by the act of 1851."

The colonization grant could not be defeated on the ground that mines existed on the land, because under Mexican law all such grants

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were subject to a reservation of all the mines on the premises; and while Mexican jurisdiction continued, these remained the property of the national sovereignty, unless specially disposed of.

By the treaty of cession, the right of the Mexican sovereignty was transferred to the American nation.

The argument in the case referred to must have rested on the ground that our own sovereignty was now the owner of the mines on the land in question; and that if a decree of confirmation was entered, and a patent issued to the claimant in the usual form, the latter would thereby obtain a larger estate than was embraced originally in his grant, and would acquire the mining right which was not covered by his original concession, and which was held by the United States government, under a subsequent transfer.

But the grant was, beyond question, within the jurisdiction given by the act of March 3d, 1851, and the Court well said that this commission had no jurisdiction to determine upon the rights claimed by the sovereign.

If Congress designed to confirm to the Mexican claimant in colonization only the interest which his grant gave him under Mexican law, and to retain the sovereign right of the mines in the conceded premises, for the subsequent disposition of the nation, it was for that body to provide, and to require, the corresponding reservation in the patent which should eventually be issued to him; or if, when the patent should issue in the usual form under the present law, it should be the opinion of the proper law officer of the Government that it confirms only such right as was given him under the Mexican law, the property in the mines being then reserved, and now belonging to the sovereignty of our nation, it pertains to the judiciary of the country, in another form of proceeding, to try the question.

In no aspect of the case, under the act of Congress of 1851, could the claimant under a colonization grant be defeated in title by showing a claim to the mines on the land in the sovereignty, nor could the question be entertained for that purpose by the court acting under it.

But the Supreme Court no where expressed the opinion that the sovereignty of Mexico could not grant the mines in her own national domain without a grant of the land itself, or could not make such separate grant of mines which were discovered in lands already conceded in colonization.

Nor have they intimated that such grant would not convey a "property" in the mines which would be protected by the treaty of Guadalupe Hidalgo; nor that a claim founded on such grant would not be a proper subject for adjudication under the act of 1851.

It is the opinion of the Commission, then, that Castillero's right to the mine was established under the Mexican law at the time of making

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the treaty of Guadalupe Hidalgo; that his interest constitututed "property" within the meaning of that treaty, and as such, was protected by it; that in its character it was a fixed, definite interest in the land, and therefore within the class of cases for adjudication of which this Commission was established by the act of Congress, and that he is entitled to have his rights secured, under our laws, by a decree of confirmation.

IV. The claim for land granted in colonization.

In the proposition of Castillero, made to the Board for Encouragement of Mining, he proposed that that corporation should represent to the Supreme Government the advantage of there being granted to him, as a colonist, two square leagues upon the land at his mining possession, with the object of being able to use the wood for his burnings.

In transmitting this document to the Supreme Government, the Board declined to express any opinion on this subject. With grants in colonization they had nothing to do. This belonged exclusively to another branch of the Goverment.

The action of the Government on this part of the application of Castillero is found in the marginal decree entered on the document, and is as follows:

"And with respect to the land, let the proper order issue to the Minister of Relations for the proceedings, so far as his department is concerned, with the understanding that the Supreme Government is favorable to the petition."

This decree was communicated to the Minister of Foreign Relations, in order that he might be pleased to issue the orders corresponding; and by him, the Governor of the Department of California was notified thereof by communication, dated May 23, 1846.

The petitioner claims that these documents establish a grant made by the President of the Republic to him.

The decree of the President is not, in my opinion, a grant, nor was it intended to be such.

The Colonization Law of 1824, and the Regulations of 1828, made under it, had committed the granting of the national lands to the Governors of the Departments, subject to the approval of the local assemblies, and in certain cases the Supreme Executive of the Republic.

The Minister of Foreign Relations and Government was the proper organ of the Executive to communicate with the Governors of the Departments, and hence the decree, not that the grant be made, but that the Minister communicate the application to the officers having charge of the subject of grants where the land was situated, with an expression of the favorable disposition of the Executive thereto.

The Minister of Relations so understood the decree, and acted in accordance, by his communication to the Governor on the subject.

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If a grant had been intended by the President, a document of title would have been issued and delivered to the party, instead of directing a simple communication to the Governor of California.

The inference from the whole proceedings is inresistible that the President did not assume to make a grant; but that he referred the matter, with an expression of his favorable appreciation of the object of Castillero, to the Governor, to proceed according to the Colonization laws on the subject.

The land asked for was, in part at least, according to Castillero's representation, granted in colonization to Berreyesa.

It could not, therefore, be granted to Castillero, unless by denouncement, which could be decreed with propriety only by the local authorities.

The Regulations also required certain investigations to be had on an application for a grant, by those authorities.

It is evident, therefore, that the President contemplated the application of Castillero to the Governor of the Department for the land in the usual form, and that the ordinary investigation agreeably to the Colonization Laws would be had by that officer, to ascertain whether the grant could with propriety be made.

It does not appear that any further proceedings were had, or that any grant was ever issued.

It is of no consequence, then, to determine whether the acting President, Paredes, had extraordinary powers, by which he was authorized to make grants without reference to the Colonization Laws, or whether, under the law of 1824, and the regulations of 1828, he could make grants by his own direct act; as we are of opinion, in the first place, that he has not assumed to make a grant, and in the second place, that the documents clearly show that he regarded the Governor of California as the proper authority to investigate the case, and to issue a grant, if the claimant entitled himself to it agreebly to the Colonization Laws.

Under these views of the case, the claim for the land must be rejected.

Filed in office, January 8th, 1856.

GEO. FISHER, Sec'y.

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OPINION BY COMMISSIONER R. AUG. THOMPSON.

ANDRES CASTILLERO, *vs.* THE UNITED STATES. } FOR THE NEW ALMADEN MINE.

The opinion of the majority of the Commission, confirming to the claimant in this case the mine of quicksilver known as the New Almaden Mine, is based upon three leading propositions, to wit:

1. That the proceedings had before the Alcalde of San José, and the acts performed by that officer in the premises, as set out in the official record filed in the case, were sufficient to invest the claimant with all the rights in the mine which the citizen would acquire under the laws of Mexico in force at the time.

2. That if those preceedings were not sufficient for the purpose, the subsequent acts of the Central Board for the encouragement of mining, and the contract authorised between that body and the claimant, with the approbation of the President of the Republic, conferred those rights irrespective of the local proceedings before the Alcalde.

3. That the rights so acquired, gave to the claimant such an interest in the mine and its appurtenances, as to constitute them lands within the meaning of the Act of Congress of the 3d of March, 1851, creating this Commission, and to bring the case within its jurisdiction.

From each and all of these propositions I dissent; and will proceed, as briefly as the nature of the subject will permit, to give my reasons therefor—considering them in the order in which they are stated above, being the same as that in which they are discussed in the opinion of the majority.

First, as to the character and effect of the proceedings before the Alcalde.

These proceedings are fully set out in the opinion of a majority of the Board, and I shall therefore only refer to them so far as may be necessary to elucidate my views of the question under consideration. The law upon which those proceedings were based, is also correctly stated in the opinion, and on this point I only differ with my associates in the conclusions which they have drawn from the facts as stated, and the law as applied by them.

It is fully admitted that the provisions of the Spanish "Ordinanzas de Mineria," promulgated by the King in 1783, prescribing the mode in which individuals and companies could acquire the right to occupy and work newly discovered mines, were in full force in Mexico at the time these proceedings were had; and art. 4, title 6, of the Ordinanzas, is cited for the purpose of showing what was necessary to be done in order to acquire such right.

As that article, and the following one, prescribe minutely and par-

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ticularly the proceedings necessary to be had, both on the part of the discoverer and the proper tribunal, to perfect his right to work the mine, and as it may be necessary in the course of this opinion to compare these provisions with the proceedings under which the present right is claimed, I shall quote them in full as translated in Rockwell, pp. 50, 51:

"The persons referred to in the preceeding sections must present a written statement to the deputation of mines in that district, or in case there should not be one in that district, to the nearest thereunto, specifying in it his name and that of his associates, (if he has any,) the place of his birth, his place of habitation, profession, and employment, together with the most particular and distinguishing features of the tract, mountain, or vein of which he claims the discovery; all of which circumstances, as well as the hour in which the discoverer shall present himself, must be noted down in a register kept by the deputation and clerk (if they have one,) and after this the said written statement shall, for his due security, be restored to the discoverer, and notices of its objects and contents shall be affixed to the doors of the church, the government houses, and other public buildings of the town, for the sake of general notoriety. And I ordain that within the term of ninety days, the discoverer shall cause to be made in the vein or veins so registered, a pit of a yard and a half in diameter or breadth, and *ten* yards in depth, and that immediately on the existence of the vein being ascertained, one of the deputies in person shall visit it, accompanied by the clerk, (if there be one,) or if there be no clerk, by two assisting witnesses, and by the mining professer of that territory, in order to inspect the course and direction of the vein, its size, its inclination on the horizon, called its falling or declivity, its hardness or softness, the greater or less firmness of its bed, and the principal marks and species of the mineral; taking an exact account of all this in order to add the same to the entry in the register, together with the act of prossession, which must be immediately given to the discoverer in my royal name, measuring him his portion, (pertenencia,) and making him enclose it by poles at the limits, as hereafter declared, after which an accurate copy of the proceedings shall be delivered to him for the security of his title, (or more correctly "as the corresponding title.")

"Art. 5. If during the above named ninety days, any one should appear asserting a right to the said discovery, a brief judicial hearing shall be granted, and judgment given in favor of him who best proves his claim: however, if this should happen after the stated time, he (the new claimant,) shall not be heard."

Some doubt is expressed in the opinion of the Board, whether the mining deputations established by the ordinances, were abolished by the decree of the Mexican Government of the 20th of May, 1826,

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for the suppression of the Tribunal General of the Mines. As the decree is entirely silent on the subject, and makes no reference whatever to the deputations, I can see no grounds from which their suppression could be inferred. From the language of the preamble to the decree of the 2d of December, 1842, and the testimony of the witnesses, Domingo Danglada and Francisco de Leon, it is probable, that during the interval between the issuing of the decree of May, 1826, and that of December, 1842, these deputations, together with other regulations of the ordinances, may have fallen into disuse, and it is also possible, that during that period the ordinary tribunals may have acted in their stead, in the registration and denouncement of mines, as testified to by the witnesses above named. But whatever may be the fact in this respect, it is certain that the decree of the 2d of December, 1842, restored those tribunals, or created others of a similar character, and invested them with all the attributes and powers conferred by the ordinance upon the former ones. (See title IV. of the Decree, Rockwell, p. 607.)

There can be no doubt, therefore, that at the time these proceedings were had, the mining deputations existed in their full vigor in Mexico, and that their proceedings in the registration and denouncement of newly discovered mines were regulated by the provisions of the ordinance quoted above.

But it is said, in the opinion of the majority, "that in the whole Department of California, there was no deputation, or mining tribunal of any kind. Application, therefore, could not be made to the officers named by law," and it may be asked, "what then could be done? Could the discoverer of a new mine here take no measures to secure his rights therein? Must the mines continue unworked, notwithstanding the anxiety of the government to induce the citizen, by a secure interest therein, to discover and to work them? And had the ordinary tribunals no authority in default of the tribunal specially charged with the subject, to act in the matter?" To the questions thus presented, the law furnishes a prompt and satisfactory answer: I give it in the language of the opinion which quotes correctly the translation in Rockwell—it is as follows: "In order to acquire the right to a mine newly discovered, the discoverer must present a written application to the deputation of mines in that district; or, *if there be none in the district, to the nearest thereunto, setting out, etc.*"

This clause of the law, it will at once be perceived, destroys the premises upon which the reasoning of the majority in favor of the Alcalde's authority to act in the matter, growing out of the supposed necessity of the case, is based; and, as a necessary consequence, the whole superstructure of argument built upon them falls to the ground. If there was no mining tribunal in California, it was clearly the duty of Castillero, under the law, to have registered his claim before the

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one nearest to it, and the fact that several of the certificates to the record of registry, and other evidence of title filed by the claimant, are dated at Tepic, situated in a rich mining district, and where such a tribunal probably existed, would seem to indicate that an effort was made for that purpose, which was probably arrested by the war, and the early occupation of California by the Americans. The supposed necessity of the case, therefore, upon which the authority of the Alcalde to act in the matter is predicated, would not arise, unless it was shown that no such substitute tribunal was in existence. It would seem, therefore, scarcely necessary to follow the majority through the supposed analogy existing between this proceeding and the practice under the laws of Spain prior to the adoption of the ordinances of 1783, as laid down in Gamboa's Commentaries. Even if the views contained in the opinion on this subject were correct, the practice, under the ordinances referred to, could only amount to a *casus omissus*, where no special tribunal being charged with the subject, the ordinary tribunals, according to the principle of the Spanish law, as laid down by Peña y Peña, took jurisdiction of the matter. But here the law itself expressly provides a substitute tribunal in default of that to which the subject was specially committed, and no other but such substitute could exercise jurisdiction over it, hence, even admitting the practice to have been as claimed by the majority, all analogy between the cases ceases, and the argument founded upon it cannot be sustained. But a careful examination of Gamboa's Commentaries, as translated in Rockwell, satisfied me that the views of the majority on this point arise from a misconception of certain passages in that work, and are by no means sustained by the authority cited.

That the ordinary tribunals of the country had no power to act in the premises, can hardly admit of a doubt, for the obvious reason that the law gave them no such authority. On the contrary, it prohibited the exercise of the power by any save those on whom it was expressly conferred. This was the rule under both the new and the old ordinances. The officers appointed for that purpose were not designated under both by the same title, but their functions were the same, and none but those on whom the power was specially conferred could excise them.

The ordinances provided for Mining Justices and Notaries, before whom registry and denouncement was to be made. The former were sometimes called Mining Alcaldes; and both were sometimes denominated Mining or Registering Notaries. Chap. V, ordinance 17, Rock. p. 170, requires the Mining Justice to send, within sixty days after denouncement, an authentic copy of the registry to the administrator general, if there should be one in the district, if not, then to the administrator of the department, so that there might be general records of mines as well as lands, according to the ordinary

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rules of the municipal law, and also that through these administrators there might be transmitted to the Viceroy a complete record of these matters throughout the kingdom. But there were in New Spain, (the Indies,) no general or special administrators to collect these records. Rock. p. 275, No. 7. For this reason the Viceroy Fuerti issued his order commanding the royal officers and justices to send an account of the mines within their respective districts. This, however, seems never to have been done.

There is certainly nothing to be found in this Commentary which sanctions the idea that the ordinary tribunals could exercise jurisdiction in matters of denouncement, in the absence of Mining Justices and Notaries, or other officers specially charged with the matter; on the contrary, Gamboa himself declares that there were Governors, Mayors, and Chief Alcaldes in the mining districts, and likewise mining and registering Notaries. But there were no general or particular administrators, they being officers before whom the discoverer could not register or denounce the mines. In his Commentary on the same chapter, (*Rock.* p. 177,) he says that although, for the purpose of securing the revenue, the discoverer shall make oath, etc., before certain other officers, yet that registry and denouncement belong alone to the officers of the Justices of the Departments, many of whom have the title of Chief Mining Alcaldes: again he states, "But judicial matters, such as registry, denouncement, the giving possession, &c. are the province of the Justice." It is therefore, evident, in my opinion, that under the former ordinances, no officer has original jurisdiction in these matters, except the mining justices, or alcaldes and notaries.

The Commentary upon chapter xxv, Rock. pp. 354, 356 to 362, is still more explicit as to the jurisdiction being exclusive, although it seems to be relied on to sustain the opposite view.

The ordinance contained in this chapter, undertakes to provide for the correction of evils growing out of costly and protracted litigation. It has reference alone to litigious proceedings, in which it is said that parties become so exhausted as to be unable to prosecute the discovery and working of mines. Gamboa shows that this ordinance was not observed in the Indies, that the organization of the general and particular administrations would be attended with additional expense, and would not tend to correct the evil, which lay in the appointment of other incompetent officers. Denouncement, insufficient working, boundaries, &c., he says, all belong to the Chief Alcaldes or Mayors, and by appeal to the royal audiences. Again, the Viceroy is forbidden to disturb the harmony and subordination which ought to exist in the functions of the different officers of the State. The Viceroy Toledo, sensible of these truths, framed for Peru three special ordinances, directing that the registries should be made before

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Alcalde. In matters of ordinary litigation, the Mining Judge or ordinary justice could take jurisdiction.

From the above review of the Commentaries of Gamboa on this subject, I am clearly of the opinion that they do not sustain the views of the majority of the Board as to the practice under the ancient ordinances; on the contrary, they shew conclusively, to my mind, that the subject of the registration and denouncement of mines was committed to officers specially appointed for that purpose; and I have been unable to discern any thing in them, tending to show that the ordinary tribunals ever took cognizance of these matters, either in default of the special authorities, or by concurrent jurisdiction with them. The discoverer of a mine could acquire no rights in it, without an act of registry before the proper tribunal. The process of registry is said to be very simple: but simple as it is, it is nevertheless indispensable, in order to give the discoverer any right whatever in the mine, "The registry is the basis of title in the mine, and the attributive cause of the subject's right of property in it." *Rock.* p. 173.

Having demonstrated, as I think I have in the preceeding pages, that the pretended registry in this case was made before an officer or tribunal having no jurisdiction of the subject, and in direct opposition to express provisions of the law under which it was had, it follows that the act itself was a mere nullity, and conferred no right whatever on the so called discoverer.

The ordinance of 1783, under which these proceedings were had, requires in art. 12, of title 19, the utmost strictness in carrying out all its provisions. It requires the Royal Tribunal General of mines to observe and carry them into effect, and to cause all the subalterns of their body to do the same without any evasions, which might alter or *corrupt* their true spirit and intent. The Territorial Deputation of Miners are also required to cause them to be observed with the utmost particularity and correctness, and not to act, or permit others to act, in contravention of their real interest and meaning in any manner whatever. A comparison of the proceedings in this case before the Alcalde, as disclosed in the testimony, under the strict rule above cited, with the requirements of the law as quoted in the preceeding part of this opinion, will show such a departure both from its letter and spirit, as would, in my view, be sufficient of itself to vacate and render void the whole act. Indeed the whole proceeding seems to have been hurried through in the short space of twenty-seven days; whereas the law fixes the period of ninety days within which contestant claimants might assert their rights, and prior to the expiration of which, judicial possession could not be given, or the *pertenencias* assigned.

I will not, however, stop to point out the discrepancies between the

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terms of the law and the acts of the Alcalde, as they will be apparent from a very cursory examination of the facts of the case; but will proceed at once to the second proposition asserted in the opinion of the majority, to wit:

That if the proceedings before the Alcalde were not sufficient to vest in the claimant the right to the mines, the subsequent acts of the Central Board for the encouragement of mining, and the contract authorized between that body and the claimant, with the approbation of the President of the Republic, had that effect irrespective of these proceedings.

The argument of the majority on this point, commences with a review of the Spanish laws in relation to mines of quicksilver, and the supply of that article to the miners generally, in which I concur. There can be no doubt that both the working of the mines and the supply of quicksilver were close royal monopolies under the Spanish crown, until the decree of the Cortes of 18 abolished this exclusive privilege of the crown, and placed mines of quicksilver on the same footing as those of other metals, opening them to public competition and individual enterprise, and subjecting them to the same process of registry and denouncement required by the ordinances, in order to acquire the right of working them. It is true that this decree of the Cortes, was, in common with the other acts of that body, annulled on the restoration of King Ferdinand; but it is also true, that this, like the others, was revived by the revolution of 1820, and was in force at the time the Independence of Mexico was achieved. It is universally admitted, and has been so decided repeatedly by this Commission, that the decrees of the Spanish Cortes, except so far as they were incompatible with the new order of things, were in full force in Mexico. And I can see no reason why this particular one should be considered as an exception to that general rule. The subsequent action of the Mexican Government on the subject, is in entire conformity with this view, particularly the decree of Congress of 1824, giving to Don Juan Binnon the exclusive right to work quicksilver mines in the territory of the Republic for the period of five years, in which decree the rights of individuals in such mines previously acquired is fully recognized and reserved. It is therefore clear to my mind, that the right to acquire and work quicksilver mines in Mexico, after the establishment of her Independence, was placed upon the same footing with the other mines of the precious metals, and were subject to the same rules and regulations as to registry and denouncement as were prescribed by the ordinances in other cases.

But it is contended that the decree of General Bravo, acting President of the Republic, of the 2d of December, 1842, established the Board for the encouragement and management of the mining corporation, and that of General Santa Anna, of the 30th of September,

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1843, more particularly defining the duties of that body, conferred upon it the power, with the approval of the Supreme Government, to invest individuals or companies with the right of property in mines, without regard to the requirements of the ordinances in relation to registry and denouncement.

This idea appears to me to be founded on an entire misconception of the objects and purposes for which that Board was created. I have examined both the decrees with the utmost care and attention, and I have been unable to discover anything in them, which, by the broadest construction, could give to the Board, either with or without the approval of the Supreme Government, any jurisdiction in matters of registry or denouncement; or any power, either by inference or otherwise, to confer mining rights or privileges, in any part of the Republic, on individuals or companies.

The powers and duties of the Board are distinctly set out in the 10th article of the Decree of Dec. 2d, 1842, and there is nothing in the other parts of it, or in that of the 30th of September, 1843, which extends its functions beyond the general purposes therein indicated—all the other articles of both decrees, so far as they have reference to the Board of Encouragement, being confined to the mode of appointing its members and officers, defining their duties and responsibilities, the manner in which the funds committed to its charge shall be raised and administered, and the encouragement of mining promoted by its funds and school.

The 10th article as translated in Rockwell, p. 605, is as follows:—The attributes of this Board shall be those which include an economical and faithful management of the funds mentioned in the present decree in conformity with the regulations which it shall draw up and submit to the Supreme Government for its approval. In this regulation shall be decided:

1. The manner in which quicksilver shall be obtained, distributed, and sold to the workers of metals, determining the cases and mode in which the working of quicksilver mines in the Republic is to be encouraged by rewards, or in any other way promoted.

2. Everything relating to the redemption of the debt of the subscribed fund according to what may be decreed in the item relating thereto.

3. The government and direction of the Board itself; and finally it shall be an attribute and object of its most particular solicitude to promote the encouragement of the branch by its funds and by its school.

The decree of the 30th of Sept., 1843, was evidently penned with a view to carry out the last clause of the first specification of the powers and attributes of the Board, contained in article 10th above quoted, for the encouragement of the working of quicksilver mines, and con-

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fers no new powers on the Board. It simply provides for the appointment of Commissioners to examine and report upon the condition of the quicksilver mines in the several departments; their capacity for being profitably worked; the quality of the ore; the works necessary to put them in operation; the expense of their erection; and finally the cost of working and extracting the metal from the ore.

This information was absolutely necessary to the Board, in order to enable it to act understandingly on the subject, and not to jeopard the funds committed to its charge in useless or unprofitable operations. The requisite information being obtained, the Board was then authorized to furnish to such mines as were considered of sufficient importance to justify it, the aid in working them contemplated by the tenth section of the decree of the 2d of December, 1842. For this purpose, two modes are laid down; the one in the nature of a loan to the owner of the mine, to enable him to put it in operation, which is to be secured by bond to the satisfaction of the Board, and to be returned within a specified time with six per cent. interest; a supervisor is to be appointed by the Board, and paid by the owner of the mine, to see that the funds are not misapplied, but are invested exclusively in the business in question; and such loan could only be made in favor of those establishments, which according to the examinations provided for by the decree, were worthy to be put in operation.

The other mode may be considered in the character of a *quasi* contract of co-partnership between the Board and proprietor of the mine, in which the former undertakes the necessary supplies to the mine for the purpose of putting it in operation, working, &c., in consideration of which they were to *receive*, after refunding the money advanced for that purpose, one half of the nett profits of the mine; the Board to have the control and direction of the operation, with the right, on the part of the owner, to appoint a supervisor. This mode of promoting the working of quicksilver mines, was also to be regulated by the reports of the examiners or commissioners provided for in the decree, as to the value of the mine, and the sums necessary to be advanced for the purpose indicated. The Board was required to draw up a regulation for supplies, upon the basis of the two foregoing articles, and submit it to the Government for approval. The other articles of the decree have reference solely to the mode of procuring the necessary funds to carry out its object.

The argument of the majority, if I understand it correctly, is based on the idea that the power to enter into the contracts above described, conferred on the Board by the decree, involves, also, the power to confer on the other party the capacity to contract. It is essential to the very nature of a contract that there should be two or more parties capable of contracting, and this decree in both the articles prescribing the character and terms of the contracts, which the Board was author-

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ized to make, pre-supposes the existence of such parties. The decree itself gives the power to the Board, and its language clearly points to another in whom it already existed—namely, the owner of the mine; to adopt any other construction would stultify the whole decree. To whom is the money to be advanced? The owner of the mine. Who is to give bond and security? The owner of the mine. Who is to invest the money, and whom is the supervisor employed to watch, in order to see that it is not perverted? The owner of the mine. Who pays the supervisor? Here the decree itself answers—the owner of the mine. The same questions might be put and answered in the same manner in reference to the contract for working the mine on shares, as it is equally manifest in that case as in the other, that the law pre-supposes the existence of another party capable of contracting. But, say the majority, the agreement of the Board to enter into the contract, with the approval of the Government, confers upon the other party the capacity to contract, and for this purpose invests him with all the rights he was capable of acquiring in the mine under the laws of Mexico. To this conclusion I cannot bring my mind to assent, nor can I reconcile it with any provision of the Mexican or Spanish laws, which I have been able to discover, having the remotest bearing on the subject.

The property of the mines in Mexico was vested in the Supreme Government as the legitimate successors to the Spanish Monarchy, and the laws in force when the separation of the two governments took place, prescribing the mode by which the citizen could acquire a right of property in them, were continued in full vigor at the time these proceedings were commenced. It was not the policy of Mexico to work the mines of quicksilver on her own account, or to continue the monopoly in the supply of that article, as had been the case under the former government; but rather by premiums, rewards and other inducements held out to her citizens, to encourage the discovery and working of such mines. Hence the decree of Sept. 30th, 1843, directing the mode in which advances should be made to the owner of the mine. There is nothing in it, or in that of Dec. 2d, 1842, creating the Mining Junta, or Board for the encouragement of mining, changing the mode of acquiring property in them, or from which any such change can be inferred. They simply authorize the Board to make certain advances to aid in the development and working of them, upon the favorable report, after due examination, by commissioners to be appointed for that purpose.

With the registry or denouncement of the mine, the Board has nothing to do; that was a subject provided for by the laws and committed to other tribunals, and until the provisions of these laws had been complied with through the agency of the proper tribunals, the functions of the Board in making such advances could not commence;

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for until then, there was no party who could enter into the contract, or comply with the terms upon which the advances were to be made. An examination of the record of proceedings before the Mining Junta filed in the case, will, I think, fully sustain this view of the subject.—The only papers contained in the *expediente*, which have any considerable bearing on the question under consideration, are the petition of Castillero to the Junta, the communication of that body to the Minister of Justice and Public Instruction, transmitting the petition to the Government and recommending a compliance with the propositions of the petitioners, and finally the decree of the President approving the agreement proposed to be made with Castillero in order to commence the extraction of the mineral. These documents, in the opinion of the majority, constitute the transaction a contract, the effect of which was to establish the rights of Castillero in the mine without a previous official registration before the local officer.

In their argument to establish this position they admit that: "The Junta was not an appellate tribunal, that it had no authority to review the proceedings of any local officer, and to affirm or disaffirm his decision; nor does it appear to have had authority in cases of registration or denouucement as known to the laws at the time of its organization." "If," say they, "the registration was not valid, the Junta had no authority to make it so by virtue of an authority to review and affirm the acts of the Alcalde." That the simple acts of registration, according to the forms prescribed by the ordinance, "perfects in the discoverer all the rights in the mine which the citizen could ever acquire."

These admissions are, to my mind, conclusive of the question under consideration, as they point out in distinct terms what was required by the law to enable the citizen to acquire a right in the mine; and, at the same time, deny to the Junta all authority or jurisdiction over the subject; and yet, by a process of reasoning which, I confess, I cannot comprehend, and which is in direct conflict with the propositions above stated, they decide that the act of the Junta, approved by the Supreme Government, conferred on the discoverer all the rights in the mine which could be be acquired by a strict compliance with all the forms of registration, as prescribed by the ordinance.

The argument by which this conclusion is arrived at, is based on the following propositions.

I quote the language of the Opinion:

"This method of acquiring the right to a mine, might not be, and probably never was, the only one by which the miner's right might be acquired. While the mines continued a part of the Royal prerogative, the method of acquiring them was subject to be changed or modified by the decree of the King, and after the independence of Mexico, although the old laws remained in force when not contrary to the new order of things, or expressly annulled, the sovereign power of the new

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nation might at any time have changed the manner of acquiring such right, and such is regarded as the effect of the decrees passed subsequently to the independence, and especially those of the 2d of Dec. 1842, and the decree of the 25th of Sept., 1845, establishing and prescribing the powers and duties of the Board for the encouragement of mines."

In relation to the powers of the King in the exercise of his Royal prerogative to confer mining rights, or to prescribe the mode of acquiring them, I do not know that there is any substantial difference of opinion between myself and the majority; but I do not admit that while the law continued unchanged, any other than that prescribed by it, could be legally employed for that purpose, even by the sovereign.

It is true that the Government of Spain was an absolute monarchy; but it was at the same time a government of laws, and the absolutism of the King consisted in the concentration in his person of all the powers of government, both legislative and executive. The King could, therefore, change the law at his pleasure; but while the law contiued in force, he was as much bound by its provisions as the subject, and any act done by him in contravention of the existing law would not be regarded by the Judiciary as a legitimate expression of the King's will. The same construction would be put upon any royal *cédula*—order or rescript,—which was issued in contravention of any existing law, without expressly referring to, and abrogating such laws. *Pro hæc vide, Ordinamiento Real, lib.* 8, *tit.* 12, *law* 1; *Novisima R, law* 2, *tit.* 4, *lib.* 8.

The principles above stated pervade the whole system of Spanish jurisprudence; it would, therefore, be useless to multiply authorities in the point.

In consequence of the monopoly of the Crown in the production and supply of quicksilver, the mines of that metal were reserved from the ordinary process of registry and denouncement by which the right to most other mines was acquired. The King might, in the exercise of his royal prerogative, remove the exemption in favor of any particular individuel or mine; but I apprehend that in such a case, the party favored would have to resort to the regular process of law to perfect his right. I do not perceive, however, that this proposition, whether true or false, has any bearing on the question at issue, as it is not contended that the Mexican Government could exercise any such prerogative.

The second branch of the proposition, that the sovereign power of Mexico might at any time change the manner of acquiring mining rights, I shall not pretend to controvert; but that the decrees cited had such effect, or can by any rule of construction lead to such an inference, is, I think, abundantly disproved by the analysis of these de-

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crees, contained in the former part of this opinion. A single additional view will, I think, place the question beyond a reasonable doubt. If any change was effected by these decrees in the mode of acquiring mining rights, it must have been by that of the 2d of December, 1842, which created the Board and defined its powers; that of the 30th of September, 1843, only prescribed the mode in which certain functions conferred by the former, should be performed. If, therefore, any change was contemplated in the decree by which the mode of acquiring mining rights was so changed as to give the Board the power, under any circumstances, to confer such rights, it is a little remarkable that under another title of the same (*Title IV.*) decree, the ancient ordinances of 1783, should be re-affirmed and reënacted, and a special tribunal instituted, with all the powers and functions of the former mining deputations, to whose charge all judicial proceedings in the affairs of mining were committed. We have already shown that these powers embraced the whole subject of registry and denouncement, and subjected the proceedings to all the laws and rules prescribed by the ordinances in relation to the same. How then can the decree be said to change the manner of acquiring mining rights, when one of its avowed and express objects is, to re-affirm and re-establish on a firm basis, the ancient method, which is declared in the preamble to have been always in force? Or can we presume that the Government, in prescribing a particular mode of doing a thing, and constituting a tribunal for the special purpose of doing it, intended by the same decree to give by implication the same powers to another body, whose attributes and functions were of a character totally different? This question is answered in the opinion of the majority where they inform us that the Board possessed no jurisdiction over the subject, and yet they claim for their acts, when approved by the Government, the same effect as if they were in full enjoyment of the power to confer mining rights. The argument is to my view suicidal; and when tested by the laws referred to in support of it, may be stated thus—The Board of Encouragement was authorized by the decree, under certain restrictions and limitations, to contract with the owners of quicksilver mines, to make certain advances or furnish supplies in aid of their development and operation. Castillero was not the owner of the mine, and consequently had no capacity to enter into such a contract; but the Board contracted with him notwithstanding, and thereby conferred upon him the ownership of the mine, and the consequent capacity to contract, a conclusion so manifestly untenable, as to require only to be stated in order to show the error of the argument from which it is drawn.

But, again, is there any evidence in the case, as disclosed by the record of the proceedings before the Mining Junta, that a contract was entered into with Castillero in accordance with the provisions of

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the decree of the 30th of September, 1843, which the opinion alleges constituted the authority for making such a contract. I think not: on the contrary an examination of the petition of Castillero and the other proceedings in relation to it, will show that the transaction referred to was an arrangement entered into between the Mining Junta and the claimants, entirely independent and outside of the provisions of the decree. The petition of Castillero commences by setting out that he had discovered in the Mission of Santa Clara a quicksilver mine of extraordinary richness; that he had denounced and taken possession of said mine, and also of an extent of three thousand varas in every direction from said point: that he had formed a company to work it; constructed the pit, and complied with the other conditions prescribed by the ordinance. He therefore makes application to the Junta to furnish the small assistance which he considered necessary, in order to carry on his operations, consisting of an advance of five thousand dollars in cash, the retorts, cylinders, and other distilling apparatus, and also iron flasks for bottling the quicksilver. The petition then proceeds in the following tenor, "I would have preferred a contract of partnership, an *avio*, or some other agreement, if there had been time to be able to furnish the proofs and details which would be required for said contracts; but being compromised by the Supreme Government to leave this capital within a few days, I find it necessary to restrict myself to that which appears to present no difficulty, and which may open the way to our future agreements. I am well persuaded that the Junta will accede to my request, so far as may be within its powers, and that it will send up to the Supreme Government, with a recommendation, that which may require the decision of the latter." He then goes on and states, under six different heads, the precise character of his propositions, and two alternative modes, in which the advances to be made by the Junta might be refunded, to which are added the following articles, numbered 7 and 8.

"Seventh. The Junta shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities of California, in the same terms as those in which I now hold it."

"Eighth. It shall also represent the advantages of there being granted to me, as a colonist, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my burnings." The petition concludes as follows: "The subscriber subjects this request to the deliberation of the Junta, which if accepted may be made into a formal contract, and made legal in the most proper manner." This petition, with the recommendations asked for in it, was transmitted to the Supreme Government by the Junta, in reply to which the following communication was addressed by the

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Minister of Exterior Relations and Government, to the President of the Junta.

"MOST EXCELLENT SIR:—Having reported to His Excellency, the President, *ad interim*, of the Republic, your Excellency's note of the 14th inst., with which you were pleased to transmit, with a recommendation, the petition of Señor Don Andres Castillero, for the encouragement of the quicksilver mine, which he has discovered in the Mission of Santa Clara, in Upper California, His Excellency has been pleased to approve, in all its parts, the agreement made with that individual, in order to commence the extraction of the said mineral; and on this day the communication has been made to the Minister of Exterior Relations and Government, to issue proper orders respecting that which is contained in the 8th proposition, for the grant of lands in that Department.

I repeat to your Excellency the assurances, &c.

God and Liberty. Mexico, May 20, 1846.

(Signed.) BECERRA.

To His Excellency, Don Vicente Segura, President of the Junta for the encouragement of mining.

Now, I deny, in the first place, that these proceedings can be construed to amount to a contract at all. It is manifest from the face of the documents, that it was a simple proposition on the part of Castillero, which, when approved by the Junta and the Government, should form the basis of a contract to be entered into in future. This is apparent from the concluding clause of the petition, in which the petitioner declares that his propositions, if accepted, may be made into a formal contract, and made legal in the most proper mode. There is no proof that this ever was done, or that the transaction was ever consummated by a formal agreement between the parties.

In the absence, then, of any proof of a contract, all the conclusions drawn from its supposed effects in conferring a right of property in the mine on the claimant necessarily fail. But admitting, for the sake of the argument, that the proceedings operated as a contract, I deny that it was made under the decree of the 30th of September, 1843, but was an arrangement independent, and outside of its provisions. A very brief reference to that decree, in connection with the petition of Castillero to the Junta, will be sufficient to establish that point. Before the Junta was authorized to contract for advances or supplies to be furnished for the working of quicksilver mines, the following requirements of the decree had to be complied with: First,

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it was necessary that an examination of the mine should be had by a commissioner, to be appointed by the Board for that purpose, and a report of the same made upon the following points. Ist. As to the condition of the mine, and its susceptibility of being worked. 2d. As to the works necessary, and the expense required to put them in operation. 3d. The quality of the ore, and the cost of working and extracting the metal: and secondly, there must have been an owner of the mine, with whom the Board might enter into the contract for advances or supplies, on the principle of a partnership, as the case might be. A reference to the proceeding will show that none of these conditions were complied with—indeed, if they had been, there would have been no necessity for applying to the Supreme Government for its approval, as the Board would have possessed ample power without such additional authority.

The only evidence of owership presented to the Junta by Castillero, was his own assertion that he had denounced and taken possession of the mine, and had complied with the other requirements of the ordinance. It is very evident that the proceedings before the Alcalde in California were never laid before the Junta. If they had been, they would, under the practice in Mexico, have constituted a part of the expediente, or at least some reference would have been made to them; but in addition to this, the fact that in the petition of Castillero to the Junta, and throughout the proceeding before that body, the mine is described as in the Mission of Santa Clara, and consequently on the public domain, whereas the proceedings before the Alcalde that it was in fact on the private property of Berreyesa, is conclusive of that point. Castillero seems to have been fully aware of the obstacles to his entering into a contract, under the decree referred to, when he uses the language quoted above in his petition, in which he says, that he would have proposed a contract of partnership, an "avio," or some other agreement, if there had been time to be able to furnish the necessary proofs and details. This quotation, evidently, has reference to the provisions of the decree; the term "avio" meaning advances made for the working of quicksilver mines, and the word "aviadór," used in the law, the person who furnishes supplies for that purpose. The proofs and details, which time would not allow him to furnish, refer to the evidence of ownership, which was necessary in order to enable him to contract: and to the report of the Commissioners upon the character of the mine, and the other particulars required by the law. He therefore proposes a temporary arrangement, which he supposes the Junta, and the approval of the Government, may be authorized to make, in order to commence the working of the mines, and which, in the words of the petition, "may open a way to their future agreements." These circumstances prove clearly, to my mind, that no contract under the decree was ever made or con-

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templated by the parties, and that the arrangement proposed to be entered into, but which was never consummated, was merely preliminary to such contract, when Castillero should, by perfecting his right to the mine, and complying with the requisition of the decree, have put himself in a condition to make such a contract.

It may be said that the decree of the Government approving the propositions of Castillero, included the 7th Art., which required the Junta to recommend to the Government the approval of the possession which had been given him of the mine by the local authorities in California; but an examination of this decree will show that the approval only had reference to that part of the proposed agreement which related to the advances to be made for the purpose of commencing the extraction of the metal.

The 8th proposition, in relation to the grant of two leagues of land, is treated of separately, and is referred to the Governor of California, to whose jurisdiction it properly belonged. To the 7th no reference is made in the decree. The reason of this is obvious: the law has created tribunals, to which all subjects relating to the acquisition of property in mines was committed, and to these tribunals, the party was, very properly, left for the purpose of surveying or perfecting his right in the premises. This course was in entire conformity with their action in relation to the petition for the two leagues of land as a Colonist. The subject of colonization, and granting of lands in California, was committed to the Governor of that Department: the President did not, therefore, think proper to interfere with the functions of that officer, and therefore referred that part of the petition to him. So in regard to the acquisition of mining rights. The Mining Deputies of the district, or of the one nearest to it, were charged with the subject; and the government had no power or authority, under the law, to interfere with their functions; they, consequently, make no reference whatever to that portion of his petition.

It is to be observed, that these proceedings took place at the precise period when the war between the United States and Mexico commenced. Castillero was then under orders to leave the Capital in public service, and the probability is, that he left without taking any further steps in the matter, leaving his right to the mine in the imperfect and inchoate state in which we find them. California was, soon after, taken possession of by the American forces, and no further opportunity was afforded him for perfecting them.

After a careful examination of the evidence in the case, and the laws of Spain and Mexico applicable to the subject, I am clearly of the opinion, that the claimant has not, upon either of the grounds presented in the Opinion of the Majority, established such a right in the mine, as would constitute it property, within the meaning of the treaty of Guadalupe Hidalgo, even admitting, that such a right, if perfected,

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could be considered a claim for land, and subject to the jurisdiction of the Commission under the provisions of the Act of the 3d of March, 1851, which brings me to the consideration of the third proposition asserted in the Opinions of the majority, to wit: III.

That the claim presented in this case, is a claim for land, within the meaning of the act, and, as such, is subject to the jurisdiction of the Commission.

The leading feature of the argument by which this proposition is maintained in the Opinion of the Majority, may be stated thus: Under the laws of Spain and Mexico, the interest which the subject or citizen could acquire in the mines, was "in property and possession, in such manner that they could sell, exchange, pass by will either in the way of inheritance or legacy, or in any other manner dispose of all their property in them, upon the terms on which they themselves possess it, to persons legally capable of acquiring it." Hence it is argued that such an interest conferred a right of property in the land itself, which was protected by the treaty of Guadalupe Hidalgo, and subject to the jurisdiction of the Commission under the provisions of the Act of Congress of the 3d of March, 1851.

I may very safely admit the premises laid down in the foregoing proposition, without, by any means, acknowledging the correctness of the conclusions drawn from them. Property is defined in the books to be the right and interest which a man has in lands and chattels, to the exclusion of others, and is divided into corporeal and incorporeal; the former comprehends such property as is perceptible to the senses, such as lands, houses, goods, merchandise, &c.; the latter consists of legal rights, as choses in action, easements, and the like. There are many things incident to land, in which an individual may acquire a right of property and possession, and yet have no proprietary right in the land itself — such as a right of way, and other easements of a similar character. Under the Common Law, and the laws of most of the States of the Union, an individual or company, or the public, might in a proceeding in the nature of a writ of *adquod damnum*, acquire a right of way through the lands of another; and such a right would possess all the characteristics of property, claimed for the mining rights of the citizens of Mexico in this case. It would be defined by metes and bounds, it would give the exclusive right of possession and occupancy for the purpose indicated, it might be sold or exchanged, and would pass by will or in the way of inheritance *ab. intestate;* the possessor of it might also be designated, with propriety, by all the terms applied to the mine owner in the laws and authorities cited in the Opinion of the Majority, such as, "master of the property," "proprietor," "owner of the property," &c., yet it has been repeatedly decided by the Courts, both in this country and England, that such a right conferred no property in the land; the rights of

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the original proprietor in the soil were continuous, subject to the easement, and whenever it ceased to be used for the purpose for which it was assigned, he was free to enter again into the possession. The rights of the citizen in mines acquired under the ordinances in Spain and Mexico, as defined in the Commentaries of Gamboa, presents so close an analogy with that of the owner of a right of way under the Common Law, as to leave no doubt on my mind, that they were incidental in their nature. A few quotations from the Commentaries, as translated in Rockwell, will I think, establish this position beyond controversy. Gamboa, in arguing in favor of the right of the Crown to the mines, and in sects. 19 and 20, proceeds as follows: "Our opinion is further confirmed by the circumstance, that the newly discovered mine can be worked until registered, and that no old mine, once abandoned, can be worked again until denounced and registered before the Justice: and that the boundaries of mines cannot be assigned, or the working conducted in an arbitrary manner, but according to the rules of the ordinances only; so that an acknowledgment of the right is in fact made to the King, or to the Justice in his name. And by the laws of the Indies, a license must be obtained previous to searching for mines or pearl banks, and an oath must be taken that all discoveries shall be duly reported for the better levying of the revenue. And an additional corroboration of this opinion is derived from the circumstance of permission being given to try for mines in the ground of any other proprietor, and of the latter being disabled from making any objection, provided a compensation be made to him for any damage to his property. For this, as we have already seen, would not be tolerated by the civil law, were it not authorized by the crown, in the exercise of its supreme right of property over the mines, and were it not a consequence of their having been reserved for the general benefit of the subject, so that all persons should be at liberty to search for and profit by them. But after all, the strongest ground of argument is afforded by the laws of Castile and of the Indies themselves, which give the subject an interest merely, and not a separate and absolute property in them, and which authorizes him to deal with them in such manner only, as shall be consistent with the regulations of the ordinances. And thus although the grant gives a right of property, yet it only amounts to the session of a partial interest, and not to an absolute transfer; the supreme right of property remaining vested in the Crown."

"Sec. 20. The correct opinion then seems to be that the property of the mines remains vested in the Crown, and that as the sovereign cannot work on his own account, he has given his subjects a partial interest in them under various restrictions, and subject to various liabilities; and as proof of this, it may be observed that, at first, the law made the quicksilver mines, amongst others, common: that subse-

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quently, it was left to the discretion of the Viceroy to allow the discoverers of the mines such advantages as they might think proper; but that finally, they were reserved for the use of the Crown only, and are not allowed to be worked in New Spain; all of which is evidence of the supreme right of the Crown." *Rockwell*, pp. 130 and 131.

So also the Ordinances of 1783. *Rockwell*, p. 53. "Any person may discover and denounce a vein, not only on common land, but also on the property of any individual, provided he pays for the extent of surface above the same, and the damage that immediately ensues therefrom."

"By the civil law," says Gamboa, "all veins and mineral deposits of gold or silver ore, or of precious stones, belongs, if in public grounds, to the sovereign, and are part of his patrimony. If on private property, they belong to the owner of the land, subject to the condition, that if worked by the owner, he was bound to render a tenth part to the Prince, as a right attaching to the Crown." *Rockwell*, p. 124.

"Under the law of Partida, the property of the mines was so vested in the King, that they were held not to pass in the grant of the land, although not excepted out of the grant, and even though inclusive in it, the grant was valid as to them only during the life of the King who made it. Afterwards, by a law of Don Alphonso the 11th, in the 'Ordinamiento Real,' copied in the collection of Castile, all veins of gold or silver or any other metal whatsoever, and the produce of the same, were declared to be the property of the Crown." *Rockwell*, 125.

In discussing the question, whether under the then existing law, upon the discovery of a mine upon the ground of another proprietor, the owner of the soil is entitled to claim precedence of, and to oust the discoverer, Gamboa insists that the discoverer is to be preferred, and assigns his reasons in the following language:

"First, because he who first takes possession according to law is in a better condition; second, because the *mine or vein is not part of the estate*, nor did it pass with the *land*, but is common, and falls to him who first takes possession: *provided* he comply with the directions of the ordinances concerning registry." *Rock.*, 109.

These extracts demonstrate clearly to my mind, that the vein was, in contemplation of law, a thing separate and distinct from the land; and the right which the discoverer or denouncer could acquire in it under the ordinances, was a mere incident to the land, or easement, subject to be divested at any time by non-user, or a failure to comply with the other conditions prescribed by them. But this will be still more apparent, when I come to consider the causes which, according to Gamboa, operated a forfeiture of the miner's right to the mine, and divested him entirely of all his interest in it. An examination of the following extracts from the commentaries, will show how slight and uncertain was the tenure by which the miner held his right to work the

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mine; and will establish fully the analogy between the right of way, under the common law, and that now under consideration. It will be seen that the non-performance of the condition operated, *ipso facto*, to divest him of his right: that these conditions were not, as asserted in the opinions of the majority, in the nature of conditions subsequent, the performance of which perfected the right, and made the estate absolute, but were continuous, and *operated* a divestiture *at any time* when a failure to comply with them occurred; and so complete was the divestiture that the miner could never afterwards re-assert his right, without a proceding *de novo* in denouncement, according to the provisions of the ordinance. On this point, Gamboa holds the following language:

"Having investigated what number of persons must be employed, and what description of labor presented, to constitute a sufficient *working* in point of law, the ordinance proceeds to impose the penalty of forfeiting the mine, *ipso facto*, upon leaving it insufficiently worked for four months successively, and that he shall have no right to the mine unless by making registry thereof anew, and going through the other proceedings, in conformity with the ordinance." *Rockwell*, 313.

"The second point established, by words of the ordinance, in providing that by leaving the mine unworked for four consecutive months, the party to whom it shall belong, shall, *ipso facto*, forfeit it, is that although the person who has left the mine unworked, *should* again set it at work before it has been denounced by any other person, yet he can claim no title to the mine, and any other person may denounce it as not having been registered, and as merely held in the possession of the party contrary to right." *Rockwell*, 315.

"A party denouncing a mine, and applying to have it adjudged to him as insufficiently worked, or upon any other ground, under which the ordinances declare it forfeited, should make registry of it anew, and observe the conditions limited by the ordinance, as appeared from the ordinances themselves in the places above cited. The old registry is of no avail, for every thing is to be done anew, *the mine itself under the new registry is a new subject*, the three 'estados' must be sunk anew, the possession is given anew, and the possessor is new. *Recedant vetera nova sint omnia.*"

"The first registry is, in fact, abolished, extinguished, and annihilated, so completely that, as is clearly laid down in the ordinance, the very party who has abandoned the mine, having forfeited it by leaving it insufficiently worked, 'has no right to it except by making registry of it anew,' so that, even supposing no new party to interpose, a fresh registry is required, the original registry being of no avail, even to the same individual; but being merged, and annihilated, without leaving a trace even in favor of the party himself who originally made it." *Rockwell*, 245, 247.

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These authorities seem to me so conclusive as scarcely to require comment. They establish, beyond a reasonable doubt, that under the law of Spain and Mexico, the title to the mine never passed from the Crown or Government, and that the right acquired by the discoverer or denouncer, under the ordinances, was simply an easement, which gave the party a right to possess and occupy the mine, and a certain portion of the land above it for the purposes, and upon the conditions prescribed by the laws upon the subject, without conferring any right of property in the land itself, of which this Commission would take cognizance.

The Supreme Court, in the case of Chateau vs. Molony, 10 *Howard*, p. 203, have cited and revised many of these authorities, and although they do not, in direct terms, decide upon the relative rights of the Government, and the discoverer or denouncer in the mines, or the nature of the interest acquired by the latter under the ordinances, yet the plain inference from the views of the Court, as expressed in the opinion, is, that the right of property never passed from the former, and that the interest of the latter was a right of occupancy merely, subject to be determined at any time by a new compliance with the conditions on which they were held. But whether this be so or not, there is one point, I think, clearly established by the Court in that case, and that is, that mines are not lands within the meaning of the act of Congress of the 3d of March, 1851. An examination of the opinion will show that the Court everywhere discriminate between mines and lands; indeed, the case was decided mainly on the ground that the grant to Dubuque was a grant of a mining privilege, and not of land. After discussing the law of Spain in relation to mining rights, and deciding that the Indians could, under these laws, acquire such rights, the Court say: "With these rights and privileges, it is much more rational to construe the contract of the Foxes with Dubuque into a sale and purchase of *mines*, than into a transfer of *lands*." Again they say: "We do not doubt that Dubuque meant to ask for lands, as well as mines. But the true point is not what he meant to ask for, but what he had a right to ask for, under his contract with the Indians, and what the Crown meant to grant, and could grant under that contract." 11 *Howard*, 231, 232, 233, 254.

We find this distinction running through the whole opinion, and the inevitable conclusion from it is, that a grant of mines or mining privileges, and a grant of lands are two separate and distinct things, and as a necessary corollary to this proposition, the power to adjudicate a right or title to *lands*, would not embrace a grant of a mine, or a mining privilege.

It is true that under the laws of Mexico, the miners were relieved from many onerous burdens, to which they were subjected under those of Spain. But none of these charges affected in any manner the char-

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acter of the interest which they held in the mine, or the tenure under which they enjoyed it. That a compliance with the terms of the ordinance would give a right of property in the mine, which the treaty of Guadalupe Hidalgo would protect, if the law in which that right is founded is not abrogated by the act of cession, does not admit of controversy; but it does not follow that it was such a right to lands as would give this Commission jurisdiction of a claim founded upon it. Property of every description, real as well as personal, is protected by the treaty, and yet it will scarcely be contended that the Commission could take cognizance of a claim for a band of horses or a herd of cattle.

I am by no means satisfied that the doctrine laid down by the Supreme Court in the case of Fremont, in relation to mines, does not apply in this case. The Court very correctly state, that the existence or non-existence of mines on the premises, would not in that case affect the claimant's right to a confirmation of the title to the land; they then go on and say: "Whether there be mines on the land, and if there be any, what are the rights of sovereignty in them? are questions which must be decided in another form of proceeding, and are not subjected to the jurisdiction of the Commission or the Court, by the act of 1850."

I can very well see why the question of the existence or non-existence of mines, could have no bearing on the decision in that case, as no claim for the mines was set up, but simply for the lands under an ordinary colonization grant. But this case is widely different. The claim is for the mine itself, and a certain portion of land appurtenant thereto, and held under the same right. This is a proceeding between the claimant and the United States, to whom the sovereignty of the country passed, by virtue of the treaty of cession. It is not denied, that under the Mexican law, the title to the mines was vested in the Government; if therefore, the right of Castillero to the mine is not established, the title to it would remain in the United States, as the successor of Mexico; this raises directly the issue as to the existence of the mine, and the right of the sovereign in it; the very questions which the Court say, in express terms, are not submitted to the jurisdiction of the Commission or the Court under the act of 1851.

There are other objections to the confirmation of this claim, and to the jurisdiction of the Commission over the subject, which I think carry with them much force, but which the great length to which this opinion has extended, will prevent my discussing in detail. I will therefore content myself with barely suggesting a few of them:

1. "The jurisdiction of this Commission only embraces claims to land which has been severed from the public domain, the limits of which can be fixed by certain metes and bounds, and the titles to which can be finally settled." The Supreme Court, in the case of

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Smith vs. The United States, 10 *Peters*, p. 330, distinctly affirm the principle here laid down. The following is the language of the Court: "The land claimed must have been severed from the general domain of the king, by some grant which gives it locality by its terms, or by reference to some description." Again, page 333–34, they say: "These provisions show clearly that Congress did not contemplate the submission of any claims to the Court, except such as, on confirmation could be surveyed and patented, and on rejection, would be thenceforth held and taken to be a part of the public domain." The authorities already cited in this opinion prove abundantly, that in the case of mines, no such severance from the public domain ever took place. The ordinance of 1783 expressly declares that, "without separating them from any royal patrimony, I grant, &c." This grant is made on conditions that never cease to bind the property, the violation of which operate an immediate forfeiture of the right. *Rockwell*, p. 49.

A confirmation of this claim, therefore, even upon the supposition that he had perfected his right to the mine, according to law, followed by a patent conveying the mine and appurtenances to the claimant in fee simple, which is the only form recognized by our law, would give the claimant a title or right of property which the Government of Mexico could not by law have conferred upon him, and one which it was impossible for him to acquire. It would be giving to him greater rights than he possessed under the former government, and would be in effect the exercise of legislative powers on the part of the Commission and the Courts.

2. The laws of Spain and Mexico, regulating the discovery, registration, and working of the mines, may well be classed with these political laws, when, by the laws of nations, are abrogated on a change of sovereignty. Their principle object was for purposes of revenue, and as such they would come within that denomination. If so, they were clearly annulled by the treaty of cession, and all rights acquired under them would necessarily cease and determine. From the best examination I have been able to give to the subject, I can discover no grounds upon which this claim can be confirmed, either upon its merits or the question of jurisdiction. I, therefore, for the reasons above stated, dissent from the opinion of the Board, so far as it confirms the claimant's rights to the mine and its appurtenances. In that part of the opinion which rejects the claim for two leagues of land under the colonization laws of Mexico, I concur.

Filed in office January 8th, 1856.

GEO. FISHER,
Secretary.

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DECREE.

ANDRES CASTILLERO,
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the Commission, that the claim of the said petitioner to the mine known by the name of New Almaden, (formerly called Santa Clara,) together with the right of enjoying the privileges as mine owner under the Mexican law, within the space, as pertenencia, of three thousand varas in all directions from the mouth of the said mine, as originally opened by said Castillero, is valid, and it is therefore decreed that the same be confirmed to him.

And as to all other rights, property, and interests, set out and claimed in the petition filed in this case, it is adjudged that the same is not valid, and the same is therefore rejected.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL.

Filed in Office Jan. 8, 1856.

GEO. FISHER,
Secy.

And it appearing to the satisfaction of this Board, that the land hereby adjudicated, is situated in the Northern District of California, it is hereby ordered, that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the Secretary; one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS,

To ascertain and settle the Private Land Claims in the State of California.

I, George Fisher, Secretary to the Board of Commissioners to

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ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing two hundred and twenty pages, numbered from 1 to 220, both inclusive, to contain a true, correct, and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 366 on the Docket of the said Board, wherein Andres Castilloro is the Claimant against the United States, for the place known by the name of New Almaden.

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-third day of February, A. D. 1856, and of the Independence of the United States of America the eightieth.

{ SEAL }

GEO. FISHER,
Secy.

(Endorsed:)
Filed February 26, 1856.

JOHN A. MONROE,
Clerk.

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PROCEEDINGS

IN THE

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF CALIFORNIA.

NOTICE OF INTENTION TO PROSECUTE APPEAL.

IN THE UNITED STATES DISTRICT COURT.

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 420.

ANDRES CASTILLERO, *Appellant*,
vs.
THE UNITED STATES, *Appellees*,
} Mine and lands of New Alamaden.

TRANSCRIPT FROM BOARD OF COMMISSIONERS, No. 366.

Andrés Castillero, claimant for the Mine and Lands called New Almaden, situate in the county of Santa Clara and in the Northern District of California, hereby gives notice of his intention to prosecute an appeal from so much of the decision of the Board of Commissioners as rejects his claim for two square leagues of land granted to him in colonization, which claim was presented to the said Board and by them rejected; his claim being that which is numbered on the docket of said Board No. 366, and the transcript whereof, as filed in the office of the clerk of this Court, is numbered No. 420.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellant.

Endorsed: Filed March 26, 1856.

JOHN A. MONROE, Clerk,
by W. H. CHEVERS, Deputy.

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APPEAL NOTICE.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 18 March, 1856.

366. "*New Almaden.*"

ANDRES CASTILLERO, Claimant:—You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 1st day of March, 1856, the appeal in the District Court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed April 15 1856,
JOHN A. MONROE, Clerk,
by W. H. CHEVERS, Deputy.

PETITION.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT, CALIFORNIA.

THE UNITED STATES,
vs.
ANDRES CASTILLERO.

D. C. 420; L. C. 366.

The United States, by their attorney, represent that this cause is for a review of the decision of the U. S. Land Commission, whereby the claim of the Appellee was confirmed in part, as will appear by reference to to the record in the case; that a transcript of said record was filed in this Court, February 26, 1856; that a notice of appeal was filed on the part of the United States, April 15, 1856; that the land claimed lies in this District, and that said claim is invalid.

Wherefore appellants pray that this Court reverse the decision of the said Commission, and decree the said claim invalid.

WM. BLANDING,
U. S. Attorney.

Endorsed: Filed April 27, 1857,
JOHN A. MONROE, Clerk,
by W. H. CHEVERS, Deputy.

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DEPOSITION OF FRANCISCO VILLEGASS.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SAN FRANCISCO, April 13, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Villegass, a witness produced on behalf of the claimants, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 366 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by John P. Brodie, a sworn interpreter.

PRESENT:—A. C. Peachy, Esq., for claimant; the U. S. District Attorney.

QUESTIONS BY ATTORNEY OF CLAIMANTS.

Question 1.—Your name, age and place of residence?

Answer 1.—Francisco Villegass; 39 years; I reside in the county of Monterey, on the ranch of San Felipe.

Question 2.—Of what country are you a native?

Answer 2.—Of the State of Sonora.

Question 3.—Did you ever live in Lower California?

Answer 3.—The most part of my life I spent in Lower California. I was eight years of age when I went there, and I was there about 23 or 24 years.

Question 4.—Did you ever hold any office in Lower California; if yea, state, what office, when and how long you held them.

Answer 4.—I cannot say exactly in what year I held them, but from the year 1830 to the year 1848, at different periods during that time. I held the office of *Scindico*, in the year 1830 or 1831; also the office of Justice of the Peace, to act in the absence of the first Justice of the Peace, which office is called "*Juez supplente de paz*," perhaps about the year 1836 or 1837, about as near as I can recollect. Afterwards I was Judge of First Instance, about the years 1843 or 1844, I don't recollect exactly; afterwards I was Constitutional Alcalde in the year 1848. I held all these offices in La Paz, in Lower California.

Question 5.—Are you acquainted with the steps pursued by individuals for registering the discovery of new mines and denouncing such as are abandoned, and of obtaining title to and possession of the same?

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Answer 5.—I have some knowledge of these matters.

Question 6.—How was that knowledge acquired?

Answer 6.—In the first place I acquired that knowledge from a residence of twenty years and more in that country, and from seeing that the Judges took cognizance of such matters.

Question 7.—While you were Judge of First Instance, or Justice of the Peace, were any proceedings had before you in the registering or denouncement of mines?

Answer 7.—There was one case before me while I was Judge of First Instance. There was a Spaniard there named Antonio Rufo, who discovered a vein in the hill called San Juan, and he presented a writing to me denouncing the same, and declaring his intention of working it. I conceded him leave to do so according to the mining ordinance, conceding him the necessary time, and afterwards, when Rufo had dug what is called the "*Pozo de posesion*," I went and gave him possession of the mine according to the mining ordinance. I have no recollection of any other case in which I was personally concerned. I never was present at any other, but I know that the judges gave possession of all mines which were denounced or registered—that is, the highest civil judge.

Question 8.—Did there ever exist, to your knowledge, in Lower California any tribunal, court, or officer, exercising special jurisdiction in matter relating to the registry or denouncement of mines?

Answer 8.—I never have known of any. The first civil judicial authority had jurisdiction over mining matters. Sometimes the Judge of First Instance, sometimes the Alcalde, but always the first local judicial authority.

Question 9.—If there had existed, in Lower California, in the years 1843–44–45–46, any such special tribunal, court, or officer, as is spoken of in the preceding question, would you have known the fact of its existence?

Answer 9.—Such could not have existed without my knowing it, because I was residing at La Paz, the capital of Lower California.

FRANCISCO VILLEGASS.

Subscribed and sworn to before me, this 13 April, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed May 4, 1857,
JOHN A. MONROE, Clerk,
by W. H. CHEVERS, Deputy.

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DEPOSITION OF JOHN P. BRODIE.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SAN FRANCISCO, April 4th, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John P. Brodie, a witness produced on behalf of the claimants, in case No. 424, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case 366 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT:—A. C. Peachy, Esq., for claimant, and U. S. District Attorney.

QUESTIONS BY ATTORNEY FOR CLAIMANT.

Question 1.—What is your name, age, place of residence, and of what country are you a native?

Answer 1.—John P. Brodie; 50 years of age; I reside at present in Stockton, San Joaquin county; I am a native of Scotland.

Question 2.—Have you resided at any time in the Mexican Republic; if yea, state in what parts and how long in each?

Answer 2.—I came to Mexico first in the year 1824. I resided in the City of Mexico until 1828, with the exception of a few months on the coast; from 1828 to 1832, I resided in the City of Guadalajara, in the State of Jalisco, and from 1832 to 1854 I resided in the State of Sonora, with the exception of about 8 months in the year 1850, in which I went to Europe, and during that time I made a visit to San Francisco; from 1854 to the present time, I have lived in California.

Question 3.—Are you acquainted with the mode pursued by individuals for registering the discovery of new mines, or denouncing such as are abandoned, and of obtaining title to and possession of the same? if yea, state the extent of your knowledge on the subject, the means by which you acquired your information what that mode is in such parts of the Mexican Republic as you are acquainted with.

(Question objected to, on the ground that the laws which govern that branch are written laws, and it is incompetent to prove written laws in this manner; also, because the inquiry seems to be directed to the mode of registering newly discovered mines and of denouncing old ones not in the territory of California, but in some of the States of Mexico.)

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Answer 8.—I have had some practice and acquired some knowledge in the matter during my residence in Mexico. The first time I had anything to do with mines was in Temascultepec, about 30 leagues to the south-west of the City of Mexico, in the State of Mexico. About 1826 or 1827, I was one of twelve who formed a company to work a mine in that district. The mine was denounced by one of our company; the denouncement was made before "*Juez de Letras*," which office is the same as Judge of First Instance, and possession was given to him also by the same judge. This was a silver mine. I went down to Temascultepec at the time possession was given. I was present when possession was given. What was required by the Mexican law to give the possession of an old mine, was to have one of the "chambers" cleaned out and in working condition; people actually working in it. This mine was shortly after abandoned by us. I had nothing to do with mining after that until the year 1832, in Sonora. I was there engaged in mining from the year 1832 to the year 1838. When I engaged in that mining in Sonora, my partner Ignacio Perez was already in possession, and possession had been given to him a few months previous to my going there. Possession had been given him by the Alcalde of Arispe, which was then the capital of Sonora, acting as Judge of First Instance. Among the papers and documents belonging to the negotiation that we were engaged in, I had in my possession the title papers to the mine, containing the denouncement and the certificate that possession had been given. The same Alcalde who had given possession was there two or three years afterwards as overseer to the mine under my orders. I have also drawn up the papers denouncing and registering mines, and petitions for possession, for other people. I have presented them to the Judge of First Instance. I have been present also when possession was given, on two or three occasions perhaps. The custom is, when a new mine is discovered, or an old mine is going to be worked, for the person who is going to claim it to file a notice with the Judge of First Instance, or with an Alcalde where there is no judge, of his intention to work or claim the mine; then, after a certain time, given for the purpose, in new mines, of opening it—in old ones, of cleaning out the chamber; after the expiration of that time, the claimant makes a petition to the Judge of First Instance, or Alcalde, the same officer with whom he has filed his notice, that possession should be given him, who then goes in person, and measures off his amount of land, and puts him in possession. If it is one individual and an old district, the land measured off is two hundred varas in the length of the vein; the same in width, I believe. When it is a company who petition, or when the mine is the first discovered in a new district, the extent measured out is more, but I forget exactly how much more is measured off. The mode described above is the same that I have known in such parts of Mexico where I have been,

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and the proceedings were always had before the Judge of First Instance, or Alcalde. The experience that I have stated with regard to drawing up papers and seeing possession given, in cases of other persons than myself, was subsequent to the year 1838; it extended over four, five or six years afterwards.

Question 4.—In what capacity did you attend to the drawing up of papers, &c., for other persons?

Answer 4.—Generally in a friendly capacity. I may have got paid for it, but I do not recollect, the same as with regard to other business I used to transact in the courts for other people.

Qvestion 5.—Please to state whether, in any part of the Mexican Republic, you have known of any other method of registering or denouncing mines than the one you have already stated.

(Question objected to on the grounds of objection mentioned before.)

Answer 5.—No, I never have.

Question 6.—Please to state whether, to your knowledge, there has existed in the State or Department of Sonora, during the time you resided there, any officer or court specially charged with jurisdiction over matters relating to mines.

(Question objected to as being irrelevant.)

Answer 6.—No, sir. I know positively that no such officer or court existed with special jurisdiction over such matters. All proceedings of this nature were had before the Judge of First Instance or Alcalde. I say this with reference to the whole time during which I resided in Sonora.

CROSS EXAMINATION—QUESTIONS BY U. S. DISTRICT ATTORNEY.

Question 1.—Do you know if there is a code of mining laws existing throughout the Mexican Republic?

Answer 1.—Yes, there is the old Spanish code, called the "*Ordenanzas de Mineria*," which existed in Mexico prior to her independence.

Question 2.—Do you know whether those ordinances describe the mode of denouncing or giving possession &c., of mines?

(The two preceding questions objected to, on the ground that they ask the witness concerning the existence and contents of written laws.)

Answer 2.—They describe it and very minutely.

Question 3.—Do you know whether the officers you have named, to

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wit, the Judge of First Instance, and the Alcalde, if there be no Judge of First Instance, derive their authority from any law of the Supreme Government of Mexico, or from laws of the respective States where they may reside ?

(Question objected to, on the ground that it is asking the opinion of the witness with regard to written laws.)

Answer 3.—I know that by the decree of the Mexican Congress, passed in the year 1824, perhaps shortly after, the Tribunal of mines, which till then had jurisdiction in all mining matters, was abolished, and the jurisdiction transferred to the ordinary Courts. There was no special tribunal after that for mining matters. I believe there are no State Laws in reference to mining affairs.

Question 4.—In your last answer do you allude to the decree of the Supreme Government of Mexico, by which the Royal Tribunal General of Mines was abolished ?

Answer 4.—I alluded to the decree which abolished the tribunal having special jurisdiction in mining affairs.

Question 5.—Who was President of the Republic of Mexico at the time of the decree you allude to was made ?

Answer 5.—I believe it must have been Guadalupe Victoria.

Question 6.—Are you perfectly certain that there were not special local tribunals in some of the States in Mexico, having jurisdiction in the registry and denouncement of mines, subsequent to the date of that decree ?

Answer 6.—I do not know that any such tribunals existed subsequent to that time. I know that either an order or a law was issued by the Mexican Government for the establishment of such tribunals in the Department of Sonora—none were established ; but whether they were or not in other States, I don't know. I don't recollect when this order or law was made, but it was soon after the year 1833.

Question 7.—At the time that you took possession of the mine, in company with others, in Temascultepec, State of Mexico, what was the extent of the *pertenencia* measured off to the company ?

Answer 7.—I really do not recollect, but it was more than two hundred varas.

Question 8.—State in detail the whole process of giving possession on that occasion.

Answer 8.—The officer went down with us into the chamber we had cleaned out, saw the vein and the direction in which it ran, and he reckoned the inclination of it ; then he measured off the *pertenencia* on the ground and drove stakes in the boundaries ; he also performed a ceremony by passing a handfull of the ore to the person who had taken possesion.

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Question 9.—On the subsequent occasions mentioned by you in your direct examination, was the same course pursued? and if not, state any particular in which it differed.

Answer 9.—On one occasion, in giving possession of the mine San Pedro, an old mine, possession was given to Don Lorenzo Lopez, by the Judge of First Instance of Arispe, simply by going upon the ground, conversing a little, and drawing up the papers. On other occasions I have seen the same ceremony more or less, generally less.

Question 10.—Do you know whether, on the occasion last referred to, the old *pertenencia* was continued as that of the denouncer, or a new one given?

Answer 10.—The San Pedro mine was in a solitary district, with no neighbors to interfere.

Question 11.—Were you ever present at the registry of a newly discovered mine?

Answer 11.—Yes, I have drawn up the paper myself and presented it.

Question 11 1-2.—State what the proceeding was in such a case.

Answer 11 1-2.—To fulfil the letter of the law was merely to file the paper with the judge or alcalde.

Question 12.—Did the Alcalde do any more than file the paper?

Answer 12.—They did not; that is, in my presence; it was done of course; it is always done.

Question 13.—Did he make no entry of any kind?

Answer 13.—I don't know whether he did or not.

Question 14.—Did he make no note of the exact time of day at which the applicant presented himself with his statement?

Answer 14.—I do not know if he did. Things were done down in Sonora, and under the Mexican Government, very loosely.

Question 15.—In giving possession of a new mine, did not the Judge or Alcalde enter and examine the trial pit, and the inclination of the vein?

Answer 15.—No, sir. To fulfil the letter of the law, a pit ten varas must be dug, but this pit is usually dug anywhere near the vein, and is very often filled up again as of no use.

Question 16.—In measuring off the *pert n:ncia* was not its length dependant on the dip or inclination of the vein?

Answer 16.—The length of the *pertenencia* is not made with reference to the inclination of the vein.

Question 17.—What was the object then, in ascertaining the inclination of the vein in giving possession?

Answer 17.—I suppose to comply with the law, which particularly describes that it should be observed.

Question 18.—Are you sufficiently acquainted with the general custom prevailing through the mining regions of the Mexican Republic, as to the whole mode of procedure and registering, denouncing and giv-

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ing possession of mines, as to state with confidence that you know what that general custom is, or have you heretofore spoken of individual cases coming under your personal observation?

Answer 18.—I think I have sufficient knowledge of the customs as to enable me to state with confidence what they are in the State of Sonora. I only refer to these particular customs so as to show the general custom prevailing there. Things were done very loosely in the courts in Sonora.

Question 19.—Have you any knowledge of the general custom prevailing in the registry and denouncement of mines in Upper California?

Answer 19.—I have none. JOHN P. BROIE.

Subscribed and sworn to before me this 4th April, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed, May 4, 1857,

JOHN A. MONROE, Clerk,
by W. H. CHEEVERS, Deputy.

CROSS PETITION ON APPEAL.

IN THE UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF CALIFORNIA.

No. 420.

ANDRÉS CASTILLERO, *Appellant*,
vs.
THE UNITED STATES, *Appellees*.

Transcript No. 366.

LANDS OF NEW ALMADEN, 2 SQUARE LEAGUES, SANTA CLARA COUNTY.

Your petitioner, Andrés Castillero, appealing from so much of the decision of the Honorable Board of Commissioners, as rejects his claim to a confirmation of two square leagues of land granted to him by the Mexican Government, respectfully shows to this Honorable Court:

That in the year 1845, your petitioner discovered a mine of Cinabar in the then jurisdiction of San José, and in the now county of Santa Clara, in this State; that having formed a company for the purpose of working said mine, he made due registry of said discovery, and, on the 30th day of December, 1845, received, in due form, the judicial possession thereof, with the *pertenencias* to the extent of three thousand varas in all directions; that his said mining right and possession was soon after submitted to the "Junta de Fomento y Administrativa de Mineria," of Mexico, and duly recommended by that body

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to the Supreme Executive of the Republic, who, on the 20th of May, 1846, approved said mining possession in the terms in which it had been given by the local authorities of California, and at the same time granted to your petitioner, in colonization and for the use of said mine, two square leagues of land on said mining possession, the document of title for which land so granted was signed and delivered to your petitioner on the 23d of May, 1846; that your petitioner, and those associated with him and holding under him, have been in possession of said mine and tract of land ever since the year 1845, and have expended large sums of money in improvements and costly structures, all of which is more particularly set fort in the petition and accompanying documents, and other evidence, in the transcript from the Board of Commissioners filed in this case.

Your petitioner further shows, that on the 30th day of September, 1852, he presented his claim for said mine, mining possession, and tract of land, before the Board of United States Land Commissioners, appointed under the Act of March 3d, 1851, to ascertain and settle private land claims in California, and that the said Board, on the 8th day of January, 1856, decided upon the validity of said claim, and confirmed so much of said claim as related to the mine of New Almaden, together with the right of enjoying the privileges as mine-owner under the Mexican law; but rejected it as to all other rights, properties and interests.

Your petitioner further shows, that the mine and lands so claimed by him are situate in the Northern District of California, and within the jurisdiction of this Court; that the transcript of the Report of the said Board of Commissioners on the claim so presented to them, was filed with the Clerk of this District on the 26th day of February, A. D. 1856; that on the 26th day of March, 1856, your petitioner filed with said Clerk a notice of intention to prosecute an appeal from so much of the decision of said Board as rejects any of the rights, property and interests of your petitioner, set out and claimed in his petition presented to said Board.

And your petitioner prays this honorable Court to review the decision of said Board of Commissioners, to reverse so much of it as rejects any part of his claim, and confirm his title to all the rights, properties and interests claimed by him in his said petition to the Board of Commissioners.

And your petitioners will ever pray, &c.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellant.

Endorsed: Filed May 4, 1857,

JOHN A. MONROE, Clerk,
by W. H. CHEVERS, Deputy.

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ANSWER OF APPELLEE.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES, *Appellants*,
vs.
ANDRÉS CASTILLERO, *Appellee*,
No. 420.

Andrés Castillero, Appellee, appears by his attorneys, and, for answer to the petition of the United States filed herein, says:

That his titles to the mine and lands of New Almaden, as set forth and described in his petition to the Board of Commissioners, and in the documentary and other evidence filed in this case, are good and valid titles; that the land, property and interest so claimed by him are situate in the Northern District of California, and within the jurisdiction of this Court.

And he prays this honorable Court to affirm so much of the decision of the Commissioners as confirms his said claim, and to decree his titles to be valid.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellee.

Endorsed: Filed, May 7, 1857.
JOHN A. MONROE, Clerk,
by W. H. CHEVERS.

NOTICE.

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.
No. 420.

GENTLEMEN:—

You will please take notice that at the examination of George M. Yoëll, James W. Weekes, and Antonio Maria Pico, to take place at 12 o'clock M., of this day, in pursuance of notice heretofore given, and also on the hearing of this cause, you are required to produce the originals of the following papers, to wit:

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1st. A petition dated Pueblo de San José, 19th of January, 1848, addressed to the Justice of the Paece (*Juez de Paz*) by Alexander Forbes in his own name and that of his associates, whom he calls owners of the mine called New Almaden, and in the name of the company formed for the working of said mine, praying him, the said Justice, with assisting witnesses, to inspect the works of said mine and ascertain the direction and inclination of the vein of said mine, for the purpose of reforming and correcting the terms of the former act of possession and correcting any mistake which might appear in it, and parsicularly of deciding upon the augmentation of *pertenencias* which the owners of said mine ought to possess, and he who works it for himself and as their representative, and marking out the square corresponding to said *pertenencias*; which original paper is in the Spanish language.

2d. The original order or decree of James W. Weekes, Alcalde, made on the 21st of January, 1848, upon the said petition, declaring the parties interested to have the right to four consecutive *pertenencias* along the direction of the vein, and also the right to have a connection of the stakes—that is, from the mouth of the mine 50 varas towards the southwest, and 150 varas towards the northeast, and for the length of the four *pertenencias* 100 varas towards the southeast, and 700 varas towards the northwest;—which paper also is in the Spanish language.

3d. The map or plan of the four *pertenencias* spoken of in said decree, showing the position of the mouth of the mine and the direction and length of the lines including said *pertenencias*.

And upon your failure to produce the said original papers, evidence will be given in behalf of the United States of their contents.

San Francisco, June 24th, 1857.

WM. BLANDING,
District Att'y.

To Messrs. Halleck, Peachy & Billings, Attorneys for Andres Castillero.

ENDORSED :

Service of the within notice acknowledged, 11 1-2 o'clock, A. M., Jund 24, 1857.

HALLECK, PEACHY & BILLINGS,
Attorneys for Castillero.

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DEPOSITION OF GEORGE M. YOËLL.

UNITED STATES DISTRICT COURT.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, June 24th, 1857.

On this day at 12 o'clock M., before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorized to administer oaths, &c. &c., came George M. Yoëll, a witness produced on behalf of the United States, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 366 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows.

PRESENT.—H. W. Halleck, Esq., of counsel for claimants, and the U. S. District Attorney.

QUESTIONS BY U. S. DISTRICT ATTORNEY.

Question 1.—What is your name, age and place of residence?

Answer 1.—My name is George M. Yoëll, 34 years old, and I reside in San José, Santa Clara Connty.

Question 2.—Do you hold any office in the county of Santa Clara: if so, what?

Answer 2.—I am deputy Recorder of the county.

Question 3.—Please examine the paper now shown to you, marked Exhibit "G. M. Y" purporting to be a copy of an instrument recorded in the office of the County Recorder of Santa Clara county, and say, if you know in whose handwriting this paper is. (Exhibit attached to this deposition.)

(Question objected to as irrelevant and incompetent, and the paper referred to in the question objected to as evidence on the ground of its being incompetent, it purporting to be a copy of an original which is not produced or its loss accounted for.)

Answer 3.—This paper is in my handwriting, but the certificate is in the Recorder's.

Question 4.—From what was this copy made?

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Answer 4.—It is made from Book No. 2, Records of Santa Clara County.

Question 5.—Has any subpœna issued in this case been served upon you, or upon S. A. Clark, County Recorder of Santa Clara County, requiring him or yourself to bring that book and produce it on this your examination?

(Question objected to as incompetent.)

Answer 5.—Yes sir, on myself and Mr. Clark likewise.

Question 6.—Have you that Book with you, and will you now exhibit it?

Answer 6.—I have not the Book. I did not bring it.

Question 7.—Why did you not bring it?

Answer 7.—Mr. Clark refused to allow the book to go out of the office.

Question 8—For what reasons?

Answer 8.—That he, as the Recorder, had no right to let the Book go out of the office or out of the County; that a certified copy would do just as well, the Book being one of the records of his office.

Question 9.—What does that Book contain?

Answer 9.—It contains grants, petitions, concessions, denouncements, in the Spanish language, and various other old records of the former Alcaldes.

Question 10.—Is it a book written in the office of the County Recorder, or one which was transferred to that office from the Alcalde's office?

Answer 10.—It was transferred from the Alcalde's office to the Recorder's of Santa Clara County.

Question 11.—Is the copy marked Exhibit "G. M. Y.," a correct copy from that book; if yea, how do you know it is so?

Answer 11.—This paper is a full, true and correct copy from the Book No. 2, Records of Santa Clara County, and made by myself.

(Question and answer objected to as incompetent to prove the paper.)

Question 12.—In whose handwriting is the entry in that Book from which you made this copy?

Answer 12.—It is in the handwriting of James W. Weeks, the former Alcalde.

Question 13.—In whose handwriting is the signature to the instrument in that Book?

Answer.—James W. Weeks, Alcalde.

Question 14.—Is the original from which the entry was made in

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that book to be found in the office of the County Recorder's office in Santa Clara County?

Answer 14.—It is not.

Question 15.—How do you know it is not?

Answer 15.—I have made a thorough and diligent search of all the records and did not find it.

Question 16.—Do you know whether the instrument written in that Book, from which you have made the copy, Exhibit "G. M. Y.," is itself the original, or whether it is a copy from some other paper?

Answer 16.—To the best of my knowledge it is the original.

Question 17.—Is the petition or request referred to in Exhibit "G. M. Y.," entered in that Book, or any other book in the office of the Recorder of Santa Clara County; or is that petition or request, or any copy of it, to be found in the office of the County Recorder?

Answer 17.—There is not on record anything of the kind that we can find; I searched for it. We did not find the petition alluded to in that paper.

Question 18.—Is there any map or plan accompanying the instrument from which you copied Exhibit "G. M. Y.?"

Answer 18.—There is none.

Question 19.—Is there in the office of the County Recorder any map or plan appearing to be connected with that instrument, or any copy of such map or plan?

Answer 19.—Not that I know of.

Qnestion 20.—If there were any such, would you know it?

Answer 20.—I should.

Question 21.—Does that Book No. 2 contain only the orders or decrees of Alcaldes, or does it also in other cases than this contain the petitions or proceedings on which such decrees or orders were founded?

(All parole evidence on subject of contents of that Book objected to.)

Answer 21.—It contains, generally, denouncements, and almost in every case accompanied by a petition, together with the grants and concessions of the former Alcaldes.

Question 22.—Please examine the paper now shown to you, marked Exhibit "E. G.," and purporting to be copy of an instrument recorded in the office of the Recorders of Santa Clara County, in Book 3 of Deeds, page 174, and say whether or not it is a true copy, and how you know it to be so? This paper attached to your deposition.

(Question objected to as incompetent to prove the genuineness of the document by parole.)

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Answer 22.—This is a true copy, made by myself and signed by myself as deputy Recorder of Santa Clara County.

(Answer objected to as incompetent and irrelevant testimony,)

Question 23.—Please examine paper marked Exhibit "H. L.," purporting to be a copy of an instrument recorded in the office of the County Recorder of Santa Clara County in Book "G" of Deeds, page 257 to 267, which paper is hereto attached, and say whether or not it is a true copy of an instrument recorded in that office, and how you know it to be so.

(Question objected to as incompetent, and the document as irrelevant and incompetent testimony.)

Answer 23.—I made this copy myself in the Recorder's office. It is a full, true, and correct copy, certified and signed by myself as Deputy Recorder. The Recorder and myself compared it.

CROSS-EXAMINATION.

Question 24.—How do you know that Book, referred to as No. 2, was tranferred from the Alcalde's office to the Recorder's office?

Answer 24.—I have no personal knowledge of it; I only know it from their being used in the Recorder's office as coming from the Alcalde's office.

GEO. M. YOËLL.

Sworn to and subscribed before me, June 24, 1857.

J. EDGAR GRYMES,
Special Commissioner.

EXHIBIT "G. M. Y."

CONCESSION—WEEKS, ALCALDE, TO LAQUIN—COPY.

JUSGADO DEL PUEBLO DE SAN JOSE DE GUADALUPE:

De conformidad con el pedimento que antecede yo al infrascrito Alcalde 1°. de esta Jurisdiccion con dos testigos de asistencia a falta de Escribano publico pase hoy veinte uno de Enero de mil ochocientos cuarente y ocho, a la espresada Mina de Nuevo Almaden: que no huviendo facultativo del Districto nombre a Clemente Laquin. Minero

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practica para examinar el estado de dicha mina lo que se hallo trabajado conforme a la ordenanza de mineria siendo firme las respaldas sus planes y obras en la mejor orden y tiempo de tepatale u otra estorbo, de manera que evita toda peligro a los operarios; y a conservar la mina en buen estado. Y haviendo el citado perito practicado las medidas y demas operaciones nesesarias para determinar el rumbo y hechada de la veta a su actual profundidad declara ser dicha rumbo de Nor Oeste y Sud Este, y su Echada ser Nordeste y que excede de varra por varra; esto es que hace con el orizonte un angulo demas de cuarenta y cinco grados; dando a los interesados derecho a la cuadra de dos cientos varras segun. Titulo VIII, Articulo 7 de la ordenanza. Y considerando que se trabaje esta mina en compañia concedo tambien el derecho que se me pide de cuatro pertenencias seguidas sobra el rumbo de la espresada veta en los planes de la mina conforme a la ordenanza Titulo XI, Artº. 2. Concedo ademas derecho a la mejora de Estacas con respeto a la variasion del rumbo de la veta. Segun Titulo VIII, Artº. 11 de la ordenanza; y Esto en la orden siguiente: Es decir: desde la boca de la mina cincuenta varras hacia el Sur Oeste y ciento cincuenta varras acia el U. E. y para la longitud de las cuatro pertenencias. cien varra hacia el Sudeste y siete cientos varras hacia el Nor Oeste sobre el mismo rumbo de la veta siendo constante el derecho y titulo de la mina a la gracia de terreno concedido en lo original acto de possesion. Practicadas estas diligencias, ordene el citado perito procedera imediatamente á sacar las espresadas medidas y fijar en los estremos de los cuatro pertenencias y en cada lado de la cuadra de dos cientos varras. los Estacas conforme a la Ordenanza. Todo lo cual se hizo en presencia mia y de los testigos de asistencia de lo que doy fé.

JAMES W. WEEKS,
Alcalde.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA,
California, March 28th, A. D. 1857.

I hereby certify that the foregoing, on pages one and two of this, is a full, true, and correct copy of an instrument of record in this office, recorded in Book No. 2, on pages 41 and 42.

{ SEAL } Given under my hand and official seal, at the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.

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EXHIBIT "E. G."—H. L. No. 2.

DEED—A. CASTILLERO TO FORBES—COPY.

En el Pueblo de San José Guadalupe a los veinte y siete dias del mes de Deciembre, del año de mil ochocientos cuarenta y sieta, actuando por receptorio a falta de escribano Publico. Ante me James W. Weeks, Juez Constitutional y testigos de asistencia presente el M. R. P. Fr. J°. M°. del Refugio S. del Real, apoderado, del Sor. D. Andres Castillero, Capitan de Caballaria Permanente, residente en la ciudad de Mexico, cuyo persona de dicho R. P. doy fe conosco, y dijo, que teniendo legitimo poder que presente de dicho Sor. Castillero para poder vender tres varas de la mina de plata con ley de oro y Azogue cituado en el rancho de Dn. Jose Reyes Bereyeza, en Jurisdicion del Pueblo de San Jose Guadalupe, del teritorio de la Alta California, en nl segundo Districto de Monterey: que con tal caracter por la presente y en la mas solemne forma que haya lugar en derecho otorgo por si y a nombre de sus herederos y sucesores, y los que sus derechos representose, que vende en venta real y enagenacion perpetua al Sor. D. Alejandro Forbes, Consul de su Magistad Britanica y ahora residente en la Asienda de la Mina espresada, y en la Jurisdiccion de este dicho Pueblo de San Jose Guadalupe, por el sus herederos y los que sus derechos representen; a Saber Tres Varas de los diez que posee, en propiedad en la referida Mina de St°. Clara que truvo el Sor. Ortogante como discubrador y con tal caractar, transfiere en el Sor. comprador las esplicadas tres varras con toda sus usos, aprovochamientos. Servidumbres con cuanto mas de echo y de derecho le toca y pertenese: pues todo lo cede renuncio y traspasa en el mensionado Sor. Forbes y a quien sus derechos represente. Declaro que los repetidos tres varras se hayan libres de toda gravamen, censo y hipoteca especial en general, y asi se lo asegura por el precio y cuantia de cuatro mil quinientos pesos, que confiesa tener resibido en moneda de plata comun y corriente del cuño Mejicana a toda su satisfaccion. Sobre lo cual renuncia la eception, de la non numeratia pecunia la ley *nueve titulo primero Partida quinta* con las cuatro años que consede para las pruevas los quedá por pasados, ortogando por la presente el mas firme y eficos resguardo que a la seguridad del comprador condusca. Azegura que el justo y legitimo precio de la esplicadas tres varras son las cuatro mil quinientos pesos, que confiesa tener recibidos pues no vale mas ni havido quien tanto lo ofresca; pero si mas fuera su valor ó con el tiempo fuere ecesion la bonanza de toda hace gracia y donasion, jura, mera y perfecta y inrevocable con incinuacion y renunciasion de la ley *dos titulo primero libro diez de la novisima recopilacion* que trata; de les contratos, que hay lesjion en mas ó menos de la mitad del justo precio fijando, cuatro años para pedir su recision a suplemento al justo

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valor, los que da por pasados, y renuncia con la ley citada. Desde hoy para siempre se disapodera, quita y aparta, de toda accion propiedad dominio y cuasi posesion que puedo tener a las esplicadas tres varras, y toda la sede, renuncia y traspasa en el Sor. comprador a quien le represente, para que como dueño de ellos disponga a su advidrio como de cosa suya adquierida con justo y legitimo titulo, huvil y translativo de dominio cual es la presente escritura tomando por si ó judirialmente su pocesion y tenencia, constituyiendose en el interin por su enguelino, y precurio posedor en legal forma. Se obliga ha la eviccion seguridad y sancamiento de esta venta, asi como a que jamas servira de obstaculo el articulo segundo de la escritura de compania otorgante en la Mision de Sta. Clara a dos de Noviembre de mil ochocientos cuarenta y cinco pues se obliga a hacer pasar y concenter en ella a sus consocios asi como ha concentido y pasado el Sor. Ortogante, pues los que han echo sus compañeros en la inteligencia que si esta no pudiese ó si le mobiese al comprador algun pleito de que as su costo no lo pudiese dejar en queto y pacifica posesion le debolvera los cuatro mil quinientos pesos que confiese tener recibidos con las frutas de las tres varras de que es dueño y pagandole toda los daños perjuicios y menos cabos que se originen sin mas pruevas que el simple juramento de la parte, y para el cumplimiento de esta obligacion hipoteca espresa, especial y señaladamente las espresadas tres vaaras que no podra vender, gravar ni de otra manera enagenar sin espreso consentamiento del Sor. Comprador, que podra en caso contrario reclamar los hasta de tercero, mas procedores para cubrirse con cuanto con arreglo a la presente escritura se le adende los costos de esta escritura seran de cuento de ambos contrayentos por mitad, y siendo presente Dn. Alejandro Forbes, Consul de su Magistad Britanica a cuya persona mayor de edad doy fe conosco, y impuesta del contenido de esta escritura dijo: quc por se y en legal forma acepta la presente, protestando para el efecto voz y convencion de *gratu et ratu* y por si mismo, se da por contento y satisfecho, con el presente instrumento, obligandose a complir lo que en el ha prometido, y le pertenece. Y al cumplimiento de todo lo espuesto el Sor. vendedor obliga a mi persona y bienes presentes y futuros, y con ellos se somete al fuero y Jurisdiccion de los Sores Juez es que de sus causas conforme a derecho pueden y devan conocer para que a ellos le compelan y apremien como por sentencia definitiva, consentida y pasada en autoridad de cosa Jusgada: renuncio su fuero domecilio y vecinidad, con la general del derecho y la que prohive su gral renunciasion, y por ante mi asi lo otorgo y firme su apoderado con el Sor. Don Alejando Forbes, siendo testigos Don Antonio Suñol, Don Jose Noriega, y Don Dolores Pacheco presentes vecinos, de que doy fe.

Y de que al firmar añadieron los Sores. contrayentes que esta venta y toda cuanta consta en la presente escritura no tendra en verificativo

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hasta que el Sor. Don Alejandro Forbes esta en quieta y pacifica posescion de las tres varras bendidos; y si por cualquiera personas, ó por cualquiera motivo fuere pertunado entonces tendra todo su efecto la hipoteca que hase para ese caso de las dies varas de que se hablo, en la clausala de eviccion de la presente escritura reproduciend ante las mismos testigos la guarentigia para el cumplimiento de este ultimo y firmaron doy fé.

Como, apoderado, Fr. Jose M. del R. S. del Real de asis^{a}. Antonio Suñol, de asis^{a}. Dolores Pacheco.

(Signed) ALEX^{o}. FORBES.

JAMES W. WEEKS,
Alcalde.

Certifico que el documento que antecede es copia fiel sacada a la letra, del Original Escritura de que dop fe (fecha ut sufra).

JAMES W. WEEKS,
Alcalde.

{ RECORDER'S OFFICE, COUNTY OF SANTA CLARA,
California, May 11th, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2, 3, 4, and 5, of this, is a full, true, and correct copy of an instrument of record in this office, recorded in Book 3 of Deeds, page 174.

NOTE.—The words, "esception de la non numeration pecunia la," interlined on 2d page, 13th line from top, having been omitted in copying from the Record.

{ SEAL } Given under my hand and official seal, at the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.

BY GEO. M. YOELL,
Deputy.

EXHIBIT "H. L.," No. 1.

En la Cuidad de Tepic a primero de Marzo de mil ochocientos cuarenta y siete, ante me el Escribano y testigos, el Señor Don Jose Cas-

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tro transienste en esta y a quien doy fe conoser dijo: que es dueño en propiedad de cuatro varras en una mina de plata con ley de oro y asogue, situada en pertenencias del rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San Jose de Guadalupe del territorio dela Alta California en el segundo Distrito de Monterey, segun consta en los archivos de aquel partido y de donde estrajo una copia estrajudicial del contrato de esa Compañia, cuyo documento presenta ya rubricado por este oficio y en donde dando fé del tal papel dise este a la letra lo que sigue. Corregida.

Documto de Compañia. "Escritura de compañia que el Señor Don Andres Castillero, Capitan de Caballeria permanente celebra con el Señor Comandante General Don José Castro, los Señores Secundino Robles, Teodoro Robles y una cesion voluntario que han hecho los Compañeros perpetuamte. al R. P. Fr. Jose Maria del Refugio Suares del Real, de una mina de plata con ley de oro y asogue en el rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San Jose de Guadalupe.

Articulo primero.—El Señor Don Andres Castillero arreglandose en un todo a la ordenanza de Mineria hase formal compañia perpetuamente con los mencionados Señores en esta forma. La mitad de la mina que es de la que puede disponer se dividira en tres acciones en esta forma cuatro varras al Señor Comandante General; cuatro varras a los Señores Secundino y Teodoro Robles, y las otras cuatro al R. P. Fray Jose Maria del Refugio Suares del Real en clase de donacion perpetua.

Articulo segundo.—Ninguno de los compañeros podra vender ó enagenar ninguna de sus acciones de manera que el que verificase dicha enagenacion perdera su derecho, quedando renunciada en los demas compañeros.

Articulo tercero.—Los gastos se haran en proporcion de las acciones llevandose, una cuenta formal.

Articulo cuatro.—Arreglandose en un todo a lo que previene la ordenanza de mineria cualquiera diferencia se resolvera por los compañeros.

Articulo quinto.—Disigira las labores, gastos y trabajos de la mina Don Andres Castillero y en su defecto el R. P. Fray Jose Maria del Refugio Suares del Real.

Articulo sesto.—No se estrahera de los productos mas cantidad que los que necesiten para el arreglo de la negociasion hasta que se arreglen los trabajos; y cualquier cantidad que se sague ha de ser con conosimiento de todos los Compañeros hasta que arreglada la negociasion.

Articulo septimo.—Estos convenios se autorisaran a presencia del Señor Prefecto del segundo Distrito Don Manuel Castro depositandose

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el documento original en el archivo del partido, y dandose una copia certificada por S. S. a los interesados.

Micion de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Por el Señor Comandante General, Don Jose Castro.

ANDRES CASTILLERO.

FRAY JOSE MARIA DEL REFUGIO SUARES DEL REAL.

Por Secundino y Teodoro Robles,

FRANCISCO ARSE.

Es copia fiel del original a la que un remito. Mision de Santa Clara, Diciembre ocho, de mil ochocientos cuarenta y cinco.

MANUEL CASTRO.
ANTONIO MARIA PICO.

Es copia, Mexico, Diciembre cinco, de mil ochocientos cuarenta y seis.

ANDRES CASTILLERO.

Sigue la Venta. Que por lo aun exto y con tal caracter de accionista en esa mina con las varras que le corresponden y en aquella via y forma que mejor haya lugar, en derecho, otorga: que por si y a nombre de sus herederos y susesores o de quien de ellos hubiese titulo voz y causa da en venta real enagenacion perpetua al Senor Don Alejandro Forbes de esta vecinidad y convenio para si y para lo sullos una vare de las que le corresponden en la mina que se ha referido y se conose con el nombre de Santa Clara. Que trasfiere en el Señor comprador el dominio util y directo de la espresada varra, con todos sus usos aprovechamientos y servidumbres con cuanto mas en derecho le pueda tocar y pertenecer pues todo lo cede y traspasa en el mencionado Señor Forbes y declara el otorgante que esa varra que enagena esta libro de todo gravamen tacito y espreso, como asi lo asegura y que la venta la hase en cantidad de ochocientos pesos que confiesa tener recibidos a toda su satisfaccion y como que esta cantidad no parese de presente renuncia la ley 9, titulo 1°. partida 5ª. y las dos años que prefiere para la prueva del recibo los que da por pasados como si lo estubieran otorgando desde ahora el mas firma y eficas resguardo que condusca a la seguridad del comprador.

Ygualmente asegura que la cantidad de ochocientos pesos en que vende esa varra es lo que ella vale y q°. aunque mas valiese del exiso cualquiera que sea en poca o mucha suma hase gracia y donacion en el comprador y los suyos conforme a derecho y renuncia la ley 2, titulo

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1°, Libro, lo de la Novissima Recopilacion y su beneficio de los cuatro años para pedir la recision de este contrato ó suplemento del Justo valor de la cosa vendida, cuyo termino da por pasada como si lo estubiera. En consequencia de desapodera deciste y aparta, de cualquiera derecho que haya tenido y tener pueda a la mencionada varra para que como propia del comprador, y adquirida con legitimo titulo desempeñe la accion que en ella le corresponda y se posesione de ella en lo Judicial ó estrajudicial en virtud de este instrumento. Ygualmente el Señor otorgante, se obliga a la eviccion y saniamento de esta venta asi como a que jamas servira de ostaculo para ella cl articulo segundo de la escritura de compañia q^e. ya queda inserta pues se obliga a haser pasar y consentir en esta venta a sus consocios, asi como á consentido y pasado el Señor otorgante por las que han hecho sus compañeros, y a este efecto ratifica la eviccion y saniamiento que ofrese.

Aseptacion. Y siendo presente el Señor Don Alejandro Forbes a quien doy fe conosco é impuesto de esta escritura dijo que por si y para los suyos asepta la venta que se le hase bajo el seniamiento que se le ofrese y queda obligado a como accionista de la mina en la varra que se le vende a cumplir con los demas socios en lo que le demarque la ordenanza del ramo. Y al cumplimiento de lo espuesto obligan los Señores otorgantes sus bienes presentes y futuros con sumicion y renunciacion de las leyes y privilegios que sean de su favor y defensa para ser estrechados como si fuera por sentencia pasada en autoridad de cosa Juzgada, y firmaron siendo testigos Don Ignacio Mariscal, Don Santos Gallegos, y Don Francisco de los Rios presentes doy fé.

JOSE CASTRO,
ALEJANDRO FORBES,
JESUS VEGAR.

Segund Escritura. En la Ciudad de Tepic a doce de Abril de mil ochocientos cuarenta y siete ante me el Escribano y testigos, El Señor Don Jose Castro, residente en esta, y a quien doy fe conosco dijo: que es dueño en propiedad de cuatro varras en una mina de plata con ley de de oro y asogue cituada en pertenencias del Rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San José de Guadalupe del territorio de la Alta California en el segundo Distrito de Monterey segun consta en los archivos de aquel partido y de donde estraja una copia estrajudicial del contrato de esa compañia cuyo documento presenta ya rubricado por este oficio y en donde dando fe del tal papel dise este a la letra lo que sigue.

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Documento de Compañia. " Escritura de compañia que el Señor Don Andres Castillero Capitan de Caballeria permanente celebra con el Señor Comandante General Don Jose Castro, los Señores Secundino Robles y Teodoro Robles, y una cesion voluntaria que han hecho los compañeros perpetuamente al R. P. Fray Jose Maria del Refugio Suares del Real de una mina de plata con ley de oro y asogue en el rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San José de Guadalupe.

Articulo primero.—El Señor Don Andres Castillero arreglandose en un todo a la ordenanza de Mineria hase formal compañia perpetuamente con los mencionados Señores, en esta forma. La mitad de la mina que es de la que puede disponer se dividira en tres acciones en esta forma: cuatro varras al Señor Comandante General: Cuatro varras a los Señores Secundino y Teodoro Robles, y los otras cuatro al Reverendo Padre Fray Jose Maria del Refugio Suares del Real en clase de donacion perpetua.

Articulo segundo.—Ninguno de los Compañeros podra vender ni enagenar ninguna de sus acciones de manera que el que verificase, dicha enagenacion perdera su derecho que dando reunida en los demas compañeros.

Articulo tercero.—Los gastos se haran en proporcion de las acciones llevandose una cuenta formal.

Articulo cuarto.—Arreglandose en un todo a lo que previene la ordenanza de Mineria cualquiera diferencia se resolvera por los compañeros.

Articulo quiuto.—Disijira las lavores, gastos y trabajos de la mina Don Andres Castillero, y en su defecto el Reverendo Padre Fray Jose Maria del Refugio Suares del Real.

Articulo sesto.—No se estrahera de los productos mas cantidad que los que de necesiten para el arreglo de la negociasion hasta que se arreglen los trabajos, y cualquiera cantidad que se saque ha de ser con conosimiento de todos los compañeros hasta que arreglada la negociasion.

Articulo septimo.—Estos convenios se autorisaran a presencia del Señor Prefecto del segundo Distrito Don Manuel Castro depositandose el documento original en el archivo del Partido y dandose una copia certificada por S. S. a los interesados.

Micion de Santa Clara dos de Noviembre de mil ochocientos curenta y cinco.

ANDRES CASTILLERO.

Por el Señor Comandante General Don Jose Castro,

ANDRES CASTILLERO.

FRAY JOSE MARIA DEL REFUGIO SUARES DEL REAL.

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Por Secundino y Teodoro Robles,

FRANCISCO ARSE.

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Micion de Santa Clara Diciembre ocho de mil ochocientos curenta y cinco.

MANUEL CASTRO.
ANTONIO MARIA PICO.

Es copia Mejico Diciembre cinco de mil ochocientos cuarenta y seis.
ANDRES CASTILLERO.

Que por lo incerto deja acreditado el Señor esponente, que en esa mina ha tenido una accion por cuatro varras, y ahora declara que de ellas ya tiene vendida una al Señor Don Alejandro Forbes, por escritura que le otorgó el primero de Marzo de este año ante este oficio (se da fe consta asi en el registro) Que quedando pues en propiedad de tres varras a la vez le conviene a sus intereses vender otra de esas, y por tanto, y en aquella via y forma que mejor haya lugar en derecho otorga que por se y a nombre de sus herederos y susesores ó de quien de ellos hubiese titulo voz y causa da en venta real y enagenacion, perpetua al mismo Señor Don Alejandro Forbes de esta vecinidad y comercio para si y para los suyos, una varra de las tres que aun le corresponden al otorgante en la mina que se ha referido y se conose con el nombre de Santa Clara. Que transfiere en el Señor comprador el dominio util y directo de la espresada varra con todos sus usos aprovechamientos y servidumbres con cuanto usas en derecho le puede tocar y pertenencer, pues todo lo cede y traspasa en el mencionado Señor Forbes. Y declara el otorgante que esa varra que enagena esta libre de todo gravamen tacito y espreso como asi lo asegura y que la venta la hase en cantidad de un mil pesos, que confiesa tener recibido a toda sn satisfaccion y como esta cantidad no parese de presente, renuncia la, ley 9, titulo 1° partida 5ª y los dos años que prefiere para la prueba del recibi los que da por pasados como si lo estubieran, otorgando desde ahora el mas firme y eficas resguardo que condusca a la seguridad del comprador. Ygualmente asegura que la cantidad de un mil pesos en que vende esa varra es lo que ella vale, y que aunque mas valiere del exceso cualquiera que sea en poca ó mucha suma hase gracia y donacion en el comprador y los suyos conforme a derecho y renuncia la ley 2 titulo 1° Libro 10 de la Novisima Recopilacion y su beneficio de los cuatro años para pedir la recision de este contrato o suplemento del susto valor de la cosa vendida cuyo termino da por pasado como si lo estuviera. En consequencia se desapodera deciste y aparta de cualquiera derecho que haya tenido y tener pueda a la mencionada varra, para que como propia del comprador y adquirida con legitimo titulo

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desempeñe la accion que en ella le corresponde y se posecione de ella en lo judicial ó estrajudicial en virtud de este instrumento. Ygualmente el Señor otorgante se obliga a la eviccion y saniamiento de esta venta asi como a que jamas servira de obstaculo para ella el articulo segundo de la escritura de compañia que ya queda incerta pues se obliga á haser pasar y consentir en esta venta a sus consocios asi como ha consentido y pasado el Señor otorgante por las que han hecho sus compañeros y a este efecto ratifica la eviccion y saniamiento que ofrese.

Aseptasion. Y siendo presente el Señor Don Alejandro Forbes a quien doy fe conosco, é impuesto de esta escritura dijo ; que por sé y para los suyos asepta la venta que se le hase bajo el saniamiento que se le ofrese y queda obligado a como accionista de la mina en la varra que se le vende, a cumplir con los demas socios en lo que le demarque la ordenanza del ramo. Y al cumplimiento de lo espuesto obligan los Señores otorgantes sus bienes presentes y futuros con sumicion y renunciacion de las leyes y privilegios que sean de su favor y defensa para ser estrechados como si fuera por sentencia pasada en autoridad de cosa Jusgada, y firmaron siendo testigos Don Ignacio Mariscal, Don Santos Gallegos, y Don Romon Ponse, presentes doy fé.

JOSE CASTRO,
ALEJANDRO FORBES,
JESUS VEGAR.

3ª Escritura. En la Ciudad de Tepic a deis y seis de Abril de mil ochocientos cuarenta y siete.

Ante me el Escribano y testigos, el Señor Don Jose Castro residente en esta y a quien doy fe conosco dijo : que ha sido dueño en propiedad de cuatro varras en una mina de plata con ley de oro y asogue cituada en pertenencias del Pueblo de San Jose de Guadalupe del territorio de la Alta California en el segundo Distrito de Monterey segun consta en los archivos de aquel partido y de donde estrajo una copia estrajudicial del contrato de esa compañia cuyo documento presento y a rubricado por este oficio y en donde dando fe del tal papel dise esta a la letra lo que sigue.

Documento de Compañia. " Escritura de compañia que el Señor Don Andres Castillero Capitan de Caballeria permanente celebra con el Señor Comandante General Don Jose Castro, los Señores Secundino Robles, Teodoro Robles, y una cesion voluntaria que han hecho los compañeros perpetuam^te^ al Reverendo Padre Fray Jose Maria del Refugio Suares del Real de una mina de plata con ley de oro y asogue

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en el rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San José de Guadalupe.

Articulo primero.—El Señor Don Andres Castillero arreglandose en un todo a la ordenanza de Mineria hase formal compañia perpetuamente con los mencionados Señores en esta forma. La mitad de la mina que es de la que puede disponer se dividira en tres acciones en esta forma: Cuatro varras al Señor Comandante General: Cuatro varras a los Señores Secundino y Teodoro Robles y las otras cuatro al Reverendo Padre Fray Jose Maria del Refugio Suares del Real en clase de donacion perpetua.

Articulo secundo.—Ninguno de los compañeros podia vender ó enajenar ninguna de sus acciones de manera que el que verificase dicha enajenacion perdera su derecho quedando reunido los demas compañeros.

Articulo tercero.—Los gastos se haran en proporcion de las acciones llevandose una cuenta formal.

Articulo cuarto.—Arreglandose en un todo a lo que previene la ordenanza de mineria cualquiera diferencia se resolvira por los compañeros.

Articulo quinto.—Dirijira las labores gastos y trabajos de la mina Don Andres Castillero, y en su defecto el Reverendo Padre Fray Jose Maria del Refugio Suares del Real.

Articulo sesto.—No se estrahera de los productos mas cantidad que las que se necessiten para el arreglo de la negociasion hasta que se arreglan los trabajos y cualquiera cantidad que se saque ha de ser con conosimiento de todos los compañeros hasta que arreglada la negociasion.

Articulo septimo.—Estos convenios se autorisaran a presencia del Señor Prefecto del segundo Distrito Don Manuel Castro, depositandose el documento original en el archivo del partido y dandose una copia certificada por S. S. a los interesados.

Micion de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Por el Señor Comandante General Don Jose Castro.

ANDRES CASTILLERO.

FRAY JOSE MARIA DEL REFUGIO SUARES DEL REAL.

Por Secundino y Teodoro Robles,

FRANCISCO ARCE.

Es copia fiel del original a la que me remito.

Micion de Santa Clara Diciembre ocho de mil ochocientos cuarenta y cinco.

MANUEL CASTRO.
ANTONIO MARIA PICO.

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Es copia Mejico Deciembre cinco de mil ocho cientos cuarenta y seis
ANDRES CASTILLERO.

Sigue la escritura. Que por lo incerto deja acreditado el Señor esponente que en esa mina ha tenido una accion por cuatro varras y ahora declara que de ellas ya tiene vendidas dos al Señor Don Alejandro Forbes por escrituras que le otorgo el primero de Marzo de este año y dose del presente mes ante este oficio (se da fe constar asi en el registro) Que quedando pues en propiedad de dos varras a la vez le conviene a sus intereses vender otra de esas y por tanto en aquella via y forma que mejor haya lugar en derecho otorga: que por si y a nombre de sus herederos y suseros o de quien de ellos hubiera titulo vos y causa, da en venta real y enagenacion perpetua al mismo Señor Don Alejandro Forbes, de esta vecinidad y comercio para se y para los suyos una varra de las dos que aun le corresponden al otorgante en la mina que se ha referido y se conose con el nombre de Santa Clara. Que transfiere en el Señor comprador el dominio util y directo de la espresada varra con todos sus usos aprovechamientos y servidumbres con cuanto mas en derecho le pueda tocar y pertenecer pues todo lo cede y traspasa en el mencionado Señor Forbes. Y declara el otorgante que esa varra que enagena esta libre de todo gravamen tacito y espreso como asi lo asegura, y que la venta hase en cantidad de un mil pesos que confiese, tener recibidos a toda su satisfaccion y como que esta cantidad no parese de presente renuncia la ley 9, titulo 1° partida 5ª y los dos años que prefiere para la prueba del recibo los que da por pasados como si lo estubieran, otorgando desde ahora el mas firme y eficas resguardo que condusca, a la seguridad del comprador.

Igualmente asegura que la cantidad de un mil pesos en que vende esa varra es lo ella vale y que aunque mas valiere del exceso cualquiera que sea su poca o mucha suma hase gracia y donacion al comprador y los suyos conforme a derecho, y renuncia la ley 2 titulo 1° Libro 1° de la Novisima Recopilacion y su beneficio de los cuatro años para pedir la recision de este contrato ó suplemento del Justo valor de la cosa vendida cuyo termino da por pasado como asi lo estuviera.

En consequencia se desapodera deciste y aparta de cualquiera derecho que haya tenido y tener puede a la mencionada varra para que como propia del comprador y adquirida con legitimo titulo desempeñe la accion que en ella le corresponde y se posesione de ella en lo judicial ó estrajudicial en virtud de este instrumento. Ygualmente el Señor otorgante se obliga a la eviccion y saniamiento de esta venta asi como a que jamas servira de obstaculo para ella el articulo segundo de la escritura de compañia que ya queda incerta pues se obliga a haser pasar y consentir en esta venta a sus consocios, asi como ha consentido y pasado el Señor otorgante por las que han hecho sus compañeros y a este efecto ratifica la eviccion y saniamiento que ofrese.

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Aseptacion. Y siendo presente el Señor Don Alejandro Forbes a quien doy fe conosco, é impuesto de escritura dijo, que por sé y para los suyos asepta la venta, que se le hase bajo el saniamiento que se le ofrese y queda obligado como accionista de la mina en la varra que se le vende a cumplir con los demas socios en lo que le demarque la ordenanza del ramo.

Y al cumplimiento de lo espuesto, obligan los Señores otorgantes sus bienes presentes y futuros con sumicion y renunciacion de las leyes y privilegios que sean de su favor y defensa para ser estrechados como si fuera por sentencia pasada en autoridad de cosa jusgada y firmaron siendo testagos Don Ignacio Mariscal.

Don Santos Gallegos y Don Ramon Panse presentes doy fé.

JOSE CASTRO,
ALEJANDRO FORBES,
JESUS VEGAR.

4ª Escritura. En la ciudad de Tepic a diez de Mayo de mil ochocientos cuarenta y siete, ante me el Escribano y testigos el Señor Don José Castro, residente en esta y en su persona que doy fe conoser dijo; que era dueño en propriedad de cuatro varras ó acciones en una mina de plata con ley de oro y asogue cituada en pertenencias del rancho de Don Jose Reyes Berreyesa en Jurisdiccion del pueblo de San Jose de Guadalupe del territorio de la Alta California en el segundo Distrito de Monterey segun consta en los archivos de aquel partido y de donde estraja una copia estrajudicial del contrato de esa compañia cuyo documento presenta rubricado y a por este oficio por haberlo tenido a la vista en otros contratos y dandose fé de esa constancia dise a la letra lo que sigue:

Consta de Compañia. Escritura de compañia que el Señor Don Andres Castillero Capitan de Caballeria permanente celébra con el Señor Comandante General Don Jose Castro, los Señores Secundino Robles, Teodoro Robles, y una cesion voluntaria que han hecho los compañeros perpetuam^te^ al R. P. Fray Jose Maria del Refugio Suares del Real de una mina de plata con ley de oro y asogue en el rancho de Don Jose Reyes Berreyesa en Jurisdiccion del Pueblo de San Jose de Guadalupe.

Articulo primero.—El Señor Don Andres Castillero, arreglandose en un todo a la ordenanza de mineria hase formal compañia perpetuamente, con los mencionados Señores en esta forma: La mitad de la mina que es de la que puede disponer se dividira en tres acciones en esta forma: Cuatro varras al Señor Comandante General; Cuatro

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varras a los Señores Secundino y Teodoro Robles y las otras cuatro al R. P. F. Jose Maria del Refugio Suares del Real en clase de donacion perpetua.

Articulo segundo.—Ninguno de los compañeros podra vender ó enagenar ninguna de sus acciones de manera que el que verificase dicha enagenacion perdera su derecho, quedando resumida en los demas compañeros.

Articulo tercero.—Los gastos se haran a proporcion de las acciones llevandose, una cuenta formal.

Articulo cuatro.—Arreglandose en un todo a lo que previene la ordenanza de mineria cualquiera diferencia se resolvera por los compañeros.

Articulo quinto.—Dirijira las labores, gastos y trabajos de la mina Don Andres Castillero y en su defecto el R. P. Fray Jose Maria del Refugio Suares del Real.

Articulo sesto.—No se estraera de los productos mas cantidad que los que se necesiten para el arreglo de la negociasion hasta que se arreglen los trabajos y cualquier cantidad que se saque ha de ser con conosimiento de todos los Compañeros que qneda arreglada la negosiasion.

Articulo septimo.—Estos convenios se autorisan a presencia del Señor Prefecto del segundo Distrito Don Manuel Castro depositandose el documento original en el archivo del partido y dandose una copia certificada por S. S. a los interesados.

Micion de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Por el Señor Comandante General Don José Castro,
ANDRES CASTILLERO.
FRAY JOSE MARIA DEL REFUGIO SUARES DEL REAL.

Por Secundino y Teodoro Robles,
FRANCISCO ARSE.

Es copial fiel del original a la que me remito.

Micion de Santa Clara, Diciembre ocho de mil ochocientos cuarenta y cinco.

MANUEL CASTRO.
ANTONIO MARIA PICO.

Es copia Mejico Diciembre cinco de mil ochocientos cuarenta y seis.
ANDRES CASTILLERO.

Sigue la venta. Que por lo incerto y con tal caracter de accionista en esa mina por las cuatro varras " que le correspondieron, sigue diciendo

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el mismo Don Jose Castro que de las dichas cuatro varras," ya tiene vendidas tres al Señor Don Alejandro Forbes de esta vecinidad segun las escrituras de venta que le ha otorgado ante este oficio el primero de Marzo dose y diez y seis de Abril de este año, cuyas escrituras ratifica de nuevo como ventas legales que ha hecho, y que viendose por ellas que al que espone solo le queda una en esa mina ahora y por convenirle a sus intereses trata de enagenarla quedando despendido en un todo de la accion que le pertenecia en la citada mina. Que por tanto y en aquella via y forma que mas firme sea, otorga el repitido Señor Castro; que por si y a nombre de sus herederos y susesores ó de quien de ellos hubiese titulo voz y causa, en manera alguna, da en venta real y enajenacion perpetua al mismo Señor Don Alejandro Forbes, de esta vecinidad y comercio para sé y para los suyos, esa varra que aun ha correspondido al otorgante en la supra dicha mina que se conose con el nombre de Santa Clara. Y como unica propiedad que en ella le quedava que transfiere en el Señor Comprador el dominio util y directo de la espresada varra con todos sus usos aprovechamientos y servidumbres y cuanto mas en derecho le pueda tocar y pertenecer pues todo lo cede y traspasa en el mencionado Senor Forbes. Y declara el otorgante que esta varra ultima que enajena esta libre de todo gravamen tacito y espreso como asi lo asegura y que la venta la hase en cantidad de mil pesos que confiesa tener reçibidos en buena moneda a su satisfaccion y que como esta suma no parese de presente renuncia la ley 9, titulo 1°, partida 5ª, y los dos años que prefiere para la prueva del recibo, los que da por pasados como si lo estubieren, y otorga al comprador el mas eficas resguardo que condusca a su seguridad. Ygualmente asegura que la cantidad de mil pesos en que vende esa varra es lo que ella vale, y que aunque mas valiere del exceso cualquiera que sea hase gracia y donacion en el comprador y los suyos conforme a derecho renuncia la ley 2, titulo 1°, Libro 10 de la Novisima Recopilacion y su beneficia de los cuatro años para pedir la recision del contrato o suplemento de su justo valor, los que da por pasados como si lo estubieran. En consecuencia se desapodera deciste quita y aparta de cualquiera derecho que haya tenido y tener pueda a la mencionada varra y accion total en la mina pª. que como propia del comprador y adquira con legitimo titulo desempeñe esa accion en lo que le corresponde y se posecione de ella en lo judicial ó estrajudicial en virtud de este instrumento. Ygualmente el Señor otorgante se obliga a la eviccion y saniamiento de esta venta asi como a que jamas servira de obstaculo para ella el articula segundo de la escritura de compañia que se ha incertado pues se obliga a haser pasar y consentir en esta venta a sus consocios asi como ha consentido y pasado el Señor otorgante por las que han hecho sus compañeros, y a este efecto ratifica la eviccion y saniamiento que ofrese.

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Aseptacion. Siendo presente el Senor Don Alejandro Forbes a quien doy fé conoser é impuesto de esta escritura dijo: que por si y para los suyos asepta la venta que se le hase bajo el saniamiento que se ofrese y queda obligado como accionista de la mina por la varra que se le vende a cumplir con los demas socios en lo que le demarque la ordenaza del ramo. Y al cumplimiento de lo espuesto obligan los Señores otorgantes sus bienes presentes y futuros con sumicion y renunciacion de las leyes y privilegios que sean de su favor y defensa para ser estrechados segun derecho como si fuera por sentencia pasada en autoridad de cosa jusgada. Asi lo otorgaron y firmaron siendo testigos Don Ramon Ponse, Don Francisco de los Rios y Don Santos Gallegos presentes doy fé.

JOSE CASTRO,
ALEJANDRO FORBES,
JESUS VEGAR.

E. R.—" de ellos "—vale.

Concuerda con sus originales que obran desde la foja cuarenta y seis a la cuarenta y nueve la primera escritura, la segunda desde la foja ciento cuarenta y dos a la ciento cuarenta y cinco: la tercera desde la ciento cincuenta y una a la ciento cincuenta y cinco, y la Cuarta desde la ciento sesenta y siete a la ciento sesenta y una, todo del Libro protocolo del año ultimo donde se sacó y corrigio en estas dies y siete fojas del sello 1° y 4° y por segunda vez a peticion del Señor comprador Don Alejandro Forbes. Y en fé de ello lo signo y firmo en Tepic a dies y siete de Agosto de mil ochocientos cuarenta y ocho.

JESUS VEGAR.

De las cuatro varras que se espresan en esta escritura se han vendido dos por el propietario á las Señores Barron, Forbes y compañia segun la que ante mi pasien esta fecha.

Tepic Abril once de mil ochocientos cuarenta y nueve.

JESUS VEGAR.

Alcalde 1° constitucional, y Escribano Publico que firmamos. Certificamos y damos fe que el signo y firma que antecede el que usa y acostumbra el Escribano Don Jesus Vegar en todos los actos que ante el pasan.

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Asi lo comprobamos en Tepic a quince de Marzo de mil ochocientos cincuenta.

LORETO CORONA.
EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America, for this district, hereby certify that the signatures attached to the foregoing document, are in the hand writing of the subscribers, who legally hold the situations therein represented, and are worthy of all faith and credit. In testimony whereof, I hereunto set my hand and seal of office, in the city of Tepic, this first day of December, in the year one thousand eight hundred and fifty.

Consulate Seal, San Blas.

G. W. P. BISSELL,
U. S. Consul.

The original of the foregoing document is written on Mexican sealed paper, and stamped, S. A. Clark, Recorder, by F. Lewis, Deputy. Filed for record, at $10\frac{37}{60}$ o'clock, A. M., April 1st, A. D., 1854, S. A. Clark, Recorder. Recorded by F. Lewis, Deputy. Recorded at request of J. A. Forbes; S. A. Clark, Recorder, by F. Lewis, Deputy.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CAL., May 11th, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, of this, is a full, true and correct copy of an instrument of record in this office, recorded in book G of Deeds, on pages 257, 258, 259, 260, 261, 262, 263, 264, 265, 266 and 267.

NOTE.—The word "vende" erased page 5, line 6; words "se saque" erased, page 7, line 9 from top; "que" interlined page 9, line 5 from top; "Castro" erased and "Pico" interlined on page 12, line from bottom; "cuanto" erased page 13, line 14 from top; "vende" interlined same page, 6 line from bottom; "que le correspondieron sigue dicien doel mismo Don José Castro que de las dichas cuatro varras," interlined on page 17, line 15 from top; "el" erased on page 20, line 10 from the bottom.

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Given under my hand and official seal, at office in the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.
By GEO. M. YOELL, Deputy.

{ SEAL }

Endorsed, José Castro to Alex. Forbes, " O. H. No. 28 1-2."

DEPOSITION OF JAMES W. WEEKS.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, June 24, 1857.

On this day, at 1 1-2 o'clock, P. M., before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came James W. Weeks, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn, and testifies as follows:

PRESENT:—H. W. Halleck, Esq., of counsel for claimant, and the U. S. District Attorney, P. Della Torre, Esq.

QUESTIONS BY U. S. DISTRICT ATTORNEY.

1st Ques.—What is your name, age and place of residence?

1st Ans.—James W. Weeks, 44 years old, and I reside in the Pueblo of San José.

2d Ques.—Who was Alcalde of the Jurisdiction of San José on the 21st of January, 1848?

2d Ans.—I believe I was 1st Alcalde.

3d Ques.—Have you any recollection of an application having been made to you, as Alcalde, about that time, to make an examination of the New Almaden mine, and to mark out the *pertenencias* of the mine?

(Objected to as leading.)

3d Ans.—I have.

4th Ques.—Who made that application to you?

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4th Ans.—James Alexander Forbes.

5th Ques.—What did you do upon that application?

5th Ans.—I proceeded to the mine, and examined the mine, and saw the pertenancias marked out, and gave possession.

(Objected to as incompetent and irrelevant testimony.)

6th Quest.—Did you make any written order or decree upon the subject?

6th Ans.—Yes, sir.

7th Ques.—How did you enter that order or decree?

7th Ans.—I entered it in the book of Archives in the office.

8th Ques.—Do you know where the book now is?

8th Ans.—I believe it is in the office of the County Recorder of Santa Clara County.

9th Ques.—Was the entry in that book the original?

9th Ans.—The original Mr. Forbes had; that was a copy. I mean James Alex. Forbes.

10th Ques.—What was the custom in the Alcalde's office, in entering orders and decrees; was it to enter them in a book and retain the book as containing the original, and give copies from the book to persons interested, or was it to deliver the originals drawn on sheets of paper, and retain a copy in the book?

(Question objected to as leading.)

10th Ans.—It was customary to deliver the original and make a copy in the book, and make copies from the book when required.

11th Ques.—Do you know whether or not the book in which you entered the decree in that matter, is the same book which is designated as "Book No. 2," in the office of the Recorder in Santa Clara County?

11th Ans.—I believe it is.

12th Ques.—Please examine the paper now shown you, marked "G. M. Y." and say whether or not it is a copy of your decree in this matter.

12th Ans.—It appears to be a copy.

(Question and answer objected to on the ground that it is incompetent to prove the contents of the original document by parole testimony.)

13th Ques.—Were you acquainted with Mr. Alexander Forbes of Tepic?

13th Ans.—Yes, sir.

14th Ques.—Where were you acquainted with him?

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14th Ans.—In California.

15th Ques.—Where was he at the time you examined the mines on this occasion?

15th Ans.—He was with us.

16th Ques.—What other persons were present at the mines on that occasion?

16th Ans.—I had with me two assisting witnesses, Antonio Maria Pico and Pedro Sepeda; both Mr Alexander and Mr. James Alexander Forbes were present, and I believe Mr. Walkinshaw was present, but I do not recollect.

17th Ques.—What was Mr. Alexander Forbes doing there?

17th Ans.—I believe he was one of .he owners of the mine.

18th Ques.—Did you take these proceedings on a verbal application or a written one?

18th Ans.—I do not recollect, but I think it was a written one.

19th Ques.—Please look at the paper now shown to you, marked "J. W. W." hereto attached, and say whether or not you recognize it to be a copy of the petition addressed to you in this matter, and upon which you made yonr decree.

(Question objected to as incompetent, no proper foundation being laid by proving that any original ever existed, or if one existed, its loss has not been accounted for.)

19th Ans.—I have no doubt but this may be a copy of that which was presented to me.

20th Ques.—After having read the paper just exhibited to you, and refreshed your recollection on the subject, please state whether or not the written petition was presented to you, and whether or not this paper is a copy of that petition?

20th Ans.—I am not certain whether this is the paper or a copy—this may be the paper presented to me or a copy.

21st Ques.—Is it either the one or the other? Is it either the original or the copy?

21st Ans.—It appears to me to be a copy. It says "copy" on top. This is in James Alexander Forbes' writing.

22d Ques.—In whose hand-writing was the original petition?

22d Ans.—In James Alexander Forbes'.

23d Ques.—In whose hand-writing was the original decree that you made upon the subject?

23d Ans.—I believe it was in James Alex. Forbes' writing likewise. He wrote it all.

24th Ques.—After making the decree and entering it in the book, what did you do with the original petition and decree?

24th Ans.—I do not recollect to whom I delivered the petition; I may have delivered it to James Alex. Forbes. I delivered the decree to him.

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25th Ques.—Is it probable that you did deliver him the original petition also? What would have been the usual and customary course in disposing of the original papers?

25th Ans.—Sometimes they would retain the original memorials, and sometimes they would deliver them to the parties.

26th Ques.—When retained what was done with them?

26th Ans.—Placed with other papers in the archives; sometimes entered in the books, sometimes put away loose.

27th Ques.—Where are the archives of the Alcalde of the jurisdiction of San José?

27th Ans.—I believe they are in the Recorder's office of Santa Clara County; some of them in the mayor's office in the city of San José.

28th Ques.—When you made that decree, did you make any map or plan of the *pertenencias* of the mine, as described in the decree.

28th Ans.—I have no recollection whether I did or not.

29th Ques.—What did James Alex. Forbes have to do with the mine?

(Objected to as incompetent and irrelevant.)

29th Ans..—I believe he was one of the partners.

CROSS-EXAMINATION.

30th Ques.—Are you certain that any written petition was presented to you in the case referred to in your direct examination?

30th Ans.—I believe there was. It strikes me that there was: so long ago that I cannot remember.

JAMES W. WEEKES.

Sworn to and subscribed before me, June 24th, 1857.

J. EDGAR GRYMES,
Special Commissioner.

EXHIBIT "J. W. W."

COPIA.

SEÑOR JUEZ DE PAZ:

Alejandro Forbes, a nombre de Simisuco, y de sus consocios dueño de la mina de plata, oro y azogue conocida con el nombre de

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Santa Clara y ahora llamada Nuevo Almaden y a nombre de la compañia formada para su laborio y avio de la misma. Ante V. como mas haya lugar en derecho expongo que la ordenanza de mineria en su titulo IX, Artº. 10, previene que toda mina debe visitarse y examinarse por peritos nombrador por el Juez, a fin de cerciorarse si son trabajadas conforme a dicha ordenanza. Y deseando el que firma cumplir con las leyes, a V. como Juez competente (por falta del tribunal a quien le toca entender en la materia) le suplico se sirva de pasar con los testigos de su asistencia a la expresada mina a imprecionar las obras y labores de ella, ahora en corriente, conforme la ordenanza de la materia; como tambien a reconocer el rumbo y echado de la veta de la enunciada mina, a su actual profundidad con el objeto de reformar y enmendar (pues hay lugar para ello) los terminos de la primera acta de posesion, y para corregir tambien cualquiera otra equivocacion que en ella paresca: segun el titulo VIII, Artº. 11 de la misma ordenanza, particularmente a decidir el aumento de pertenencias que deben poseer los dueños de la citada mina, y su habilitador por si mismo y como representante de aquellos, y la cuadra que corresponde a las dichas pertenencias, conforme al verdadero echado de la veta.

Por lo que. A. V. suplico se sirva demandar proveer el presente escrito en los terminos expuestos, y practicadas que sean las diligencias, que se me devuelvan para el debido resguardo y fines que convengan a los interesados sirviendo de admitir este en papel simple, por falta total del sellado en este departamento. Pueblo de San José, 19 de Enero, 1848.

DEPOSITION OF ANTONIO MARIA PICO.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, June 24th, 1857.

On this day, 3 o'clock P. M., before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, authorized to administer oaths, &c., &c., came Antonio Maria Pico, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle private land claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and

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was duly sworn and testified as follows—his evidence being interpreted, (by consent of attorneys) by J. Edgar Grymes, Commissioner.

PRESENT:—U. S. District Attorney, and H. W. Halleck, Esq., for Claimants.

QUESTIONS BY U. S. DISTRICT ATTORNEY.

1st Ques.—What is your name, age, and place of residence?

1st Ans.—My name is Antonio Maria Pico, 48 years, and I reside in San José.

2d Ques.—Do you know anything about an application made by Mr. Alexander Forbes, in January, 1848, to the Justice of the Peace or Alcalde, for an examination of the New Almaden mine, and the measurement of *pertenencias*, or the proceeedings of James W. Weekes, as Alcalde, upon such an application? if yes, state what you know.

(Question objected to.)

2d Ans.—Mr. Weekes was at the mine, and I was with him as a witness; there was also another witness, whose name I do not remember, and the two Forbes', the younger and the elder. They were measuring the mouth of the mine with a cord; after that we went to the hacienda, and James Alexander Forbes wrote out a decree; everything was done that was necessary, and we signed the document.

(Question and answer objected to as irrelevant and incompetent testimony.)

3d Ques.—Were any other persons present but those you have named?

3d Ans.—There were some other persons, but I do not remember who they were.

4th Ques.—Was Mr. Robt. Walkinshaw there?

4th Ans.—I do not remember if he was there—I think he was.

5th Ques.—Did you measure anything else beside the mouth of the mine?

5th Ans.—Yes, sir: they measured 200 by 700 varas, that is what I think.

6th Ques.—What did they measure 200 by 700 varas for?

6th Ans.—I do not know what they measured for—I believe it was for information.

7th Ques.—Do you know at whose request the Alcalde went there?

7th Ans.—He went there at the request of the owners.

8th Ques.—Did you see any papers there?

8th Ans.—Yes, I saw those that Mr. Forbes was making.

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9th Ques.—Who were present when Mr. Forbes drew up the decree?

9th Ans.—Those who went there. I do not remember who they were. Their names ought to be on the paper.

10th Ques.—Did you read it?

10th Ans.—Mr. Forbes read it in my presence.

11th Ques.—Look upon the paper marked "G. M. Y." now shown you, and say whether or not it is a copy of the decree to which you refer.

11th Ans.—Yes, sir, it appears to be the same.

12th Ques.—Examine the paper now shown to you, marked "J. W. W.", and say whether or not you ever saw the original of which this is a copy.

12th Ans.—I do not remember if I ever saw this paper before. It is in the hand-writing of Forbes. I remember that Forbes was present, but I do not recollect this paper. I recollect the other paper.

13th Ques.—Did you ever know a man called Clemente Luquin or Laquin?

13th Ans.—I do not recollect.

(10th and 11th questions and answers objected to as incompetent to prove the contents of papers referred to: the other questions and answers severally objected to as having reference to matters which are irrelevant and incompetent testimony in this case.)

CROSS-EXAMINATION.

14th Ques.—Do you know of your own knowledge, who requested the Alcalde to go to the New Almaden, as stated in your direct examination?

14th Ans.—I know that it was Mr. Alexander Forbes.

15th Ques.—Do you know of your own knowledge that he made the request?

15th Ans.—I do.

16th Ques.—How do you know that he made the request?

16th Ans.—Because I was there when he asked him.

17th Ques.—Where was he when he made the request?

17th Ans.—I have said that it was at the mine; Forbes was there also.

18th Ques.—Was the request made at the time the Alcalde was present at the mine, or before?

18th Ans.—I am not certain if it was before or at the mine itself.

19th Ques.—Was it made verbally or in writing?

19th Ans.—It was in writing.

ANTONIO MA. PICO.

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Sworn to and subscribed bofore me, June 24th, 1857.
J. EDGAR GRYMES,
Special Commissioner.
Endorsed:—Filed July 18, 1857, JOHN A. MONROE, Clerk,
By W. H. CHEVERS, Deputy.

[H. L., No. 3; "O. H. No. 28."]

DEED—S. & J. T. ROBLES TO FORBES.

En la Mision de Santa Clara de la Alta California a las catorce del mes de setiembre de mil ochocientas cuarenta y siete. Ante mi Ygnacio Alvisu Juez de Paz de esta Jurisdiccion y ante los testigos de un asistencia con quienes actuo, en forma divida a falta de Notario Publico comparecieron, en sus propias personas Don Secundino Robles y Don José Teodoro Robles naturales de esta California, a quieres doy fe conosco y dijeron que por si y a nombre de sus hijos herederos y sucesores y de quienes de ellos hubiese titulo voz y cansa en cualquiera manera. Venden y dan en Venta Solemne y enagenacion perpetua todos sus derechos y acciones en dos varras en cada una de las tres, pertenencias de la mina de Azogue de Almaden de Santa Clara con todos los privilegios gracias concesiones y premios de cualquiera naturalesa que sean hechas a los socios de la citada mina por el Gobierno Mejicano, y en fin todo el derecho que anexo sea a las espresadas dos varras. D. Diego Alejandro Forbes vice consul de S. M. B. para Californias y declaran y aseguran los enunciados Don Secundino Robles, Don José Teodoro Robles no tener enaganadas ni bendidas las espresadias dos barras ni parte algunas de ellas, en la citada mina de Azogue de Almaden de Santa Clara, y que en su totalidad estan libres de todo gravamen perpetuo temporal general tacito y espreso vinculo tributo y fianaz y como tal se las venden con todo el derecho anexo a ello en precio y cantidad de tres mil ocho sientos sesenta pesos, (3860 Pesos) que les tiene entregados el comprador y los otorgartes han resibido a su entera satisfaccion y asi mismo declaran que su justo precio y verdadero valor de las esperesadas dos varras, en cada una de las pertenencias con todos los derechos e acciones asesas a ellas segun queda esplicado son los mencionados. Tres mil ocho cientos sesenta pesos (3860 Pesos,) y que no valen mas y que en caso de que mas valgan o valer puedan del exceso en poca ó mucha suma, lo ceden en el comprador sus hijos herederos y sucesores, gracia y donacion pura perfecta é irrevocable que en derecho se llama intervivos con insinuacion y demas primeras legales, con la circunstancia de que desde hoy en adelunte:—para siempre jamas las enunciadas dos Varras, en cada una de las tres pertenencias de la citada mina de Azogue de Almaden de Santa Clara con todos los derechos y acciones que les son

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anexas, son de la legitima propriedad del espresado. Don Diego Alejandro Forbes y quien le represento. Y los enunciados Don Secundino Robles y Don José Teodoro Robles renuncian las leyes que tratan de Contratos compras y ventas teneques y cambios y de otras en que hay lesion en mas o menos de la mitad del justo precio y desde hoy en adelante para siempre jamas se desapoderan quitan y apartan y a sus hijos herederos y sucesores y cualquiera de ellos del dominio propiedad posesion titulo voz y recurso competar, a las enunciadas dos varas en cada una de las tres pertenencias (segun y conforme esplicada Ella, en este documento) en la citada mina de Azogue las renuncian ceden y traspasan en el comprador y en quien le represento, para que las posea trabaje use disfrute gosé cambio enagene y disponga de ellas a su eleccion como de cosa suya adquirida con legitimo y justo titulo y le contiesen poder irrevocable con libre parroca y general administracion constituyendole procurador en su propia causa. Y para la exacta observancia de todo lo referido y para el sostenimiento del comprador y sus tienderos en el goze pacifico de la enunciada finca se obligan los otorgantes con sus bienes habidos y por haber y con ellos se someten a los tres Jueces y Justicias que de sus causas puedan y deran conocer conforme a derecho para que a su cumplimiento les compilan y apremien como por sentencia definitiva consentida y pasada, en cosa Jusdado, que por el caso les favorescan, e cuyo testimonio asi lo ortogaron y por no saber firman hicieron la señal de la Santa Clara ante mi el precitado jues y los testigos de que doy fé.

SECUNDINO ROBLES, IGNACIO ALVISU, x
JOSE TEODORO ROBLES, Jues Auxiliar.
AGUSTIN DESFORGES, Asistencia.
As. EUSEBIO SALERIDON.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11th, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2 and 3 of this, is a full, true and correct copy of an Instrument of record in this office, recorded in Book 2, of Deeds, on pages 269, 270 and 271.

Given under my hand and official seal, at the City of San José, the day and year last written.

{ SEAL }

S. A. CLARK, County Recorder,
By GEO. M. YOELL, Deputy.

H. L., No. 4; "O. H., No. 30

DEED—S. & J. T. ROBLES TO R. WALKINSHAW.

This indenture made and entered into this fourteenth day of April A. D. one thousand eight hundred and forty-eight in the Mission of

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Santa Clara, territory of California, by and between James Alex. Forbes of the same place in the name and stead of José Teodoro Robles and Secundino Robles of the territory of California aforesaid of the first part and Robert Walkinshaw presently residing at the mines of New Almaden of the second part Witnesseth, that the said James Alex. Forbes being fully authorized by letters of attorney to him duly granted by the aforesaid José Teodoro Robles, Secundino Robles, bearing date the twenty-sixth of March, 1846, for and in consideration of the sum of Seven thousand Dollars lawful money to be paid to him by the said Robert Walkinshaw, of the second part, in the following manner to wit, one thousand Dollars in hand paid, the receipt of which is hereby acknowledged, and six thousand Dollars in two installments or payments, one of which of three three thousand Dollars to be paid at six months, and one of four thousand Dollars to be paid at nine months—both from the date of these presents, has granted bargained sold and conveyed and by these presents doth grant bargain sell and convey unto the said Robert Walkinshaw party of the second part and to his heirs and assigns forever all the right, title and interest of the aforesaid José Teodoro Robles and Secundino Robles to two twenty-fourth shares or *barras* in the Quicksilver mines of *New Almaden de Santa Clara*, now in operation under contract of Alexander Forbes, Esquire, Sf. and under the immediate management of the said Robert Walkinshaw with all and singular the rights privileges and Product thereunto belonging or in any wise appertaining to the said two twenty-fourth shares or parts of the whole of the aforesaid mine of *New Almaden de Santa Clara* of which the said José Teodoro Robles and Secundino Robles became part proprietors in Nov. 1845, By grant from Andres Castillero as is fully set forth in a document under that date archived in the records of the town of San José; To have and to hold the said two twenty-fourths of the whole of the said mine of *New Almaden de Santa Clara* the said Robert Walkinshaw his heirs and assigns forever; and the said James Alex. Forbes does hereby consent and agree one the part of the said José Teodoro Robles and Secundino Robles to warrant and defend the said party of the second his heirs and successors in the use, benefit and behoof of the Product of the aforesaid and two twenty-fourths of the said mine of *New Almaden de Santa Clara* against all persons whomsoever. In testimony whereof the said James Alex. Forbes, attorney for the said Jose Teodoro Robles and Secundino Robles has hereunto placed his hand and seal the day and date above written.

Witnesseth, JAMES ALEX. FORBES.

ANTONIO SENAS; MASSIMORE FERNANDES.

DISTRICT OF SAN JOSE, SS.—On this tenth day of July, A. D. 1848, before me personally came James Alex. Forbes, to me known

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to be the person described in and who executed the foregoing conveyance, and exhibited to me his power of attorney authorizing him to make and execute the foregoing instrument, and at the same time he acknowledged the execution of the same for the purposes therein mentioned.

K. H. DIMMICK,
1st Alcalde.

RECORDER'S OFFICE, SANTA CLARA COUNTY, CALIFORNIA, July 28th, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2 and 3 of this, contains a true and correct copy of an instrument now of record in this office, and recorded in Book 5 of Deeds, pages 137 and 138.

Witness my hand and official seal, at office in the city of San José, the day and date last written.

S. A. CLARK, County Recorder,
By GEO. M. YOELL, Deputy.

{ SEAL }

(H. L. No. 5. "O. H. No. 31.")

DEED—J. M. REAL TO R. WALKINSHAW.

En la Mision de Santa Clara, a las nueve dias del mes de Agosto, de mil ochocientos cuarenta y nueve ante mi Jorge Bellamy, Alcalde auxiliar de la jurisdiccion del Pueblo de San José de Guadalupe, y testigos de asistencia comparecio el Reverendo Padre Fray José Maria del Refugio Zuares del Real, a quien dey fe conosco y dijo: que a virtud de un contrato de compañia celebrado entre el S. D. Andres Castillero, Sr. Don José Castro, Don Teodoro y Don Secundino Robles, el dos de Noviembre, de mil ochocientos cuarenta y cinco le corresponden y pertenece en derecho de donacion perpetua cuatro barras en una mina de plata con ley de oro y azogue, cituada segun se expresa en el espedieete de Registro, en pertenencias del rancho de Don José Reyes Berreyesa, en la misma jurisdiccion ties de cuyas cuatro varas el. Potorgante vendio y enageno al Sr. Don Alejandro Forbes per escritura de ventas del mes de Enero de mil ochocientos cuarenta y ocho. Que ahora y en su caracter de accionista en la dicho mina de la manera mencionada, y en la via y forma que mejor haya lugar en derecho otorga, que por si sus herederos y sucesores a virtud de cualesquier derecho caracter o titulo que fuera, dá en venta y enagenacion real y perpetua a Dn Roberto Walkinshaw vecino de esta jurisdicion para si y para los suyos la citada una vara

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que aun le pertenece en donacion perpetua, en la referida mina que en su titulo de registro, se conoce con el nombre de la de Santa Clara, y actualm^te^ por la del Nuevo Almaden. Que trasfiere en el espresado Dn Roberto Walkinshaw el derecho util y recto de la espresada varra con todos sus usos aprovachamientes y servidumbres: con los frutos y productos que a ella corresponden y pertenecen, desde y posterior a el diez y siete de Deciembre de mil ocho cientos cuarenta y seis con poder a reclamar los mismos en el poder de cualquiera persona existen, con cuanto mas en derecho le pueda tocar y pertenecer pues todo lo cede y traspasa en el mencionado Sr. Dn Walkinshaw. Y declara el otorgante que la varra que enagena es libre de todo gravamen general y particular tacito y espres como asi la asegura, y la venta de ella, y de sus frutos y productos como arriba se espresa, se hace en la cantidad de cinco mil pesos en moneda corriente, que confiesa haber recibido a toda su satisfaccion. Que espresamente renuncia el beneficio de la ley 9 tit. 1° partida 5ª è igualmente la ley 2ª tit 1ª Libro 10, de la novisima Recopilacion como de cualquier otra ley que favoresca su derecho á pedir prueba del recibo del valor á la reversion de este contrato, brajo del protesto que fuera. En consequencia se desapodera desiste y aparta de cualquier derecho que haya tenido y tener, pueda a la mencionada varra para que como propria del comprador y adquerida de legitimo titulo, desempeñe la accion que en ella le corresponde; y se posecione de ella en lo judicial ó estrajudicial en virtud de este instrumento.

Igualmente el otorgante se obliga a la eviccion y sanamiento de esta venta, como asi que jamas servira de obstaculo para ella el artº segundo de citado contrato de compañia. Y estando presente Dn Roberto Walkinshaw a quien doy fe conozco y impuesto de esta escritura dijo que por se y para los suyos accepta la venta que se le hace bajo el sanamiento que se le ofrece y queda obligado como accionista de la espresada mina en la varra que se le vende, a cumplir los demas socios en conformidad a las leyes. Y al cumplimiento de la esprusto obligan los otorgantes sus bienes presentes y futuros con sumision y renunciasion de las leyes y priveligios que sea en su favor y defensa para ser estrechados como si fuera por setencia pasada en autoridad de caso juzgada y firmaron siendo testigos, Dn Jesus Herrera y Dn Franᶜᵒ Arce.

Fr. J. Mª del R. J. del Real.

GEO. W. BELLAMY,
Alcalde.

ROBERT WALKINSHAW.

De asª FRANCISCO ARCE,
De asª JESUS HERRERA.

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RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11, A. D. 1857.

I hereby certify, that the foregoing, on pages 1, 2 and 3 of this, is a full, true and correct copy of an instrument, of record in this office, recorded in book 5, on pages 178 and 179.

Given under my hand and official seal, at the city of San José the day and year last written.

S. A. CLARK,
County Recorder.

[H. L. No. 6. O. H. No. 29.]

POWER OF ATTORNEY—ALEX. FORBES TO JAS. ALEX. FORBES.

(DUPLICATE.)—Know all men by these presents that I Alexander Forbes a British subject at present residing in the city of Tepic in the Republic of Mexico in my own name and in the name of the company established for the working of the mine of New Almaden or Santa Clara, in Upper California have made constituted and appointed and by these presents do make constitute and appoint James Alex. Forbes of Santa Clara in California my true and lawful attorney for me and in my name, and in the name and stead of the company aforesaid to demand and receive possession of the said mine of New Almaden, from whosoever may be in the management or possession thereof with all the ores utensils houses and all and everything thereto-ing appertaining hereby authorizing my said attorney to direct and work the same for my account and for account of the foresaid company in such manner as shall appear to my said attorney to be for the interest of all concerned, and in conformity with the instructions to that effect given and I hereby in my own name and in a name of the company aforesaid delegates to him my said attorney my full and entire power and authority in the premises, to demand accounts, recover debts receive all funds belonging to me or to the aforesaid company or to the said mine to demand the same at law or equity to name and appoint managers and laborers to remove the same and to perform all such lawful acts deeds matters and things therein as may be requisite and necessary in as large full and ample a manner as I myself might or could do were I personally present and acting therein in my own proper person or as if my said attorney was thereto more fully and especially authorized with full and ample powers of substitution and revocation at his own will and pleasure, hereby engaging to ratify and confirm all and whatsoever my said attorney or his substitute or substitutes shall or may lawfully do or cause to be done in the premises under or by virtue of these presents. In testi-

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mony whereof, I have set set my hand and seal to these presents this twenty-third day of April, in the year of our Lord one thousand eight hundred and forty-nine.

ALEX. FORBES. { SEAL }

JOAQUIN ANDRADE, Witness.
WM. E. BARRON, Witness.

Infras exitos escribanos publicos certificamos que las centeniones firmas son propias de los sessones Don Alejandro Forbes Don Joaquin Andrade y Don Guillemo E. Barren, las mismas que usan entodas sus negocios En cuya comprabasion sentamos la presente en Tepic á diez y nueve de Mayo de mil ochocientos cuarenta y nueve.

PANFILO SOLIS.

JESUS VEGAS.

I hereby certify that the foregoing signatures are in the true handwriting of the subscribers who held the situations represented and who are worthy of all faith and credit.

Given under my hand and seal of office, in the city of Tepic, this 19th day of May, 1849.

{ SEAL }

ESTACE W. BARREN,
Consul.

The above is a true copy of the original, given under my hand this twenty.sixth day of September, A. D. 1849.

C. T. RYLAND,
Recorder.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2, and 3, of this, is a full, true and correct copy of an instrument, of record in this office, recorded in book 5, on pages 284 and 285.

Given under my hand and official seal, at the city of San José, the day and year last written.

{ SEAL }

S. A. CLARK,
County Recorder.

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[H. L. No. 7. "O. H. No. 36."]

DEED—J. A. FORBES TO JOHN PARROTT.

This indenture made and entered into this ninth day of August in the year one thousand eight hundred and fifty, by and between James A. Forbes of Santa Clara in the State of California of the first part, and John Parrott of San Francisco, of the same State of the second part witnesseth. That the said party of the first part for and in consideration of the sum of twenty-four thousand dollars ($24,000) lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, hath granted, bargained, sold aliened, remised, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to his heirs and assigns for ever, One entire and unencumbered "*Barra*," or Twenty-fourth part of the Quicksilver Mine of New Almaden in the County of Santa Clara State of California. Together with all and singular the lands tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents issues and profits thereof. And also all the Estate right title interest property possession claim and demand whatsoever, as well in law as in equity of the party of the first part, of, in and to the party of the first part, of and to the above described Twenty-fourth part of the said Mine, with its appurtenances. To have and to hold all and singular the above mentioned twenty-fourth part of the said mine and its appurtenances unto the said John Parrott party of the second part, his heirs and assigns for ever. And the said James A. Forbes party of the first part and his heirs the said twenty-fourth part of the said Mine in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the said party of the first part & his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will Warrant and by these presents for ever defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year above written.

JAMES ALEX^{R}. FORBES. { SEAL }

Sealed and delivered in the presence of

WM. E. BARRON,
BERNARD PEYTON, JR.

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STATE OF CALIFORNIA, } ss
COUNTY OF SAN FRANCISCO. }

On this ninth day of August, A. D. 1850, before me, a Notary Public in and for said county, personally came James A. Forbes, known to me to be the person described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Witness my hand and seal of office,

JNO McVICKAR,
Notary Public, San Francisco Co.

{ SEAL }

Filed for record 6½ o'clock, A. M., 17 Aug. 1850.

J. T. RICHARDSON,
Recorder, S. C. C.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, } CALIFORNIA, May 11, A. D. 1857. }

I hereby certify, that that the foregoing, on pages one and two of this, is a full, true and correct copy of an instrument, of record in this office, recorded in book A. of deeds, on page 336.

Given under my hand and official seal, at the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.

{ SEAL }

[H. L. No. 8. "O. H. No. 39."]

DEED—J. A. FORBES TO H. LAURENCEL.

Know all men by these presents, that I, James Alexander Forbes of Santa Clara Upper California for and in consideration of the sum of Five Thousand Four Hundred Dollars, to me in hand paid by Henry Laurencel Esq. of San Francisco, the receipt of which sum I do hereby acknowledge, have granted bargained sold and quit-claimed and by these presents do bargain sell and quit-claim unto the said Henry Laurencel Esq. his heirs and assigns for ever, all my right

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title and interest claim and demand, both at law and in equity, as well in possession as in expectancy of in and to, Three Twentieth parts of one share or one Twenty-fourth part of the Quicksilver mine of New Almaden situated in the County of Santa Clara, Upper California, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof I have placed my hand and seal this tenth day of September A. D. one thousand and Eight hundred and Fifty.

JAS. ALEX^{R}. FORBES.

Witness:
A. C. CAMPBELL.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

Be it remembered that on this the 25th day of September 1850, before me appeared James Alex. Forbes, personally known to me to be the person described in and who executed the foregoing Deed, and acknowledged that he executed the same freely, voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my private seal, there being no official seal, the date last above written.

JOHN T. RICHARDSON.
By A. C. CAMPBELL,
Deputy Recorder.

{ SEAL }

Filed for record 7 o'clock, A. M., 27 Sept. 1850.
T. J. RICHARDSON,
Recorder.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, }
CALIFORNIA, May 11, A. D. 1857. }

I hereby certify, that the foregoing, on pages one and two of this, is a full, true and correct copy of an instrument, of record in this office, recorded in book B, of deeds, on pages 118 and 119.

Given under my hand and official seal, at the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.

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[H. L. No. 9. "O. H. No. 38."]

DEED—H. LAURENCEL TO BOLTON BARRON & CO.

Know all men by these presents: that I, Henry Laurencel of the city of San Jose county of Santa Clara and State of California, for and in consideration of the sum of Three Thousand Dollars, to me in hand paid by James R. Bolton and William Barron, composing the firm of Bolton Barron & Company, in the city of San Francisco, State of California, the receipt whereof is hereby acknowledged, have bargained granted, sold released conveyed and transferred, and by these presents do grant bargain, sell, release, convey and transfer unto the said James R. Bolton and William Barron, their heirs and assigns Three twentieths of one "*barra*," or of one Twenty-fourth part, of the mine of New Almaden, situated in the said County of Santa Clara, together with all the lands tenements, hereditaments, privileges and appurtenances thereunto belonging: To have and to hold the above granted land and property unto the said James R. Bolton and William Baron their heirs and assigns to their use and behoof for ever. And I do, for myself, my heirs, executors and administrators, covenant and agree with the said Bolton and Barron, their heirs and assigns in manner and form following, that is to say: that the above described property is free from all incumbrances, had, made, done or suffered by me or by any person, claiming or to claim by, from or under me; and that I will, and my heirs executors and administrators shall warrant and for ever defend the same unto the said Bolton and Barron, their heirs and assigns against any person lawfully claiming or to claim, by from or under me, or by any of my act, means, assent or procurement.

In testimony whereof I have hereunto set my hand and seal, this 22nd day of March in the year of our Lord one thousand eight hundred and fifty-one.

H. LAURENCEL. { SEAL }

Signed sealed & delivered in presence of

H. W. HALLUCK.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

On this 22d day of March, A. D. 1851, before me John Flournoy, Deputy Recorder in & for the aforesaid county personally came H. Laurencel, known to me to be the person whose name is subscribed to the foregoing instrument, & acknowledged that he executed the same, freely, voluntarily, and for the uses and purposes therein set forth.

I testimony whereof, I have hereunto set my hand and affixed my

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private seal, (there being as yet no official seal provided,) at office, this day and date last above written.

{ SEAL }

JOHN FLOURNOY,
Deputy Recorder, in and for said County.

Filed 9 35-60 o'clock, A. M., 22d March, 1851.

T. J. RICHARDSON, Rec.
J. FLOURNOY, Deputy.

RECORDER'S OFFICE, SANTA CLARA COUNTY, CHLIFORNIA, July 28, A. D. 1857.

I hereby certify that the foregoing, on pages 1 and 2 of this, contains a true and correct copy of an instrument now of record in this office, and recorded in book C, of Deeds, on pages 330 and 331.

Witness my hand and official seal at office, in the city of San José, the day and date last written.

S. A. CLARK,
County Recorder.
By GEO. M. YOELL,
Deputy.

{ SEAL }

[H. L. No. 10. "O. H. No. 39."]

DEED—BOLTON & BARRON TO J. E. FERNANDEZ.

Know all men by these presents that We, James R. Bolton and Wm. Barron of the firm of Bolton Barron & Co., of San Francisco California for and in consideration of the sum of Six thousand Dollars, ($6000) to us in hand paid by José E. Fernandez also of San Francisco, the receipt whereof is hereby acknowledged have bargained granted sold released conveyed and transferred, and by these presents do bargain grant sell release convey and transfer unto the said Jose E. Fernandez his heirs and assigns, three twentieths (3-20ths) of one Barrow, or of one twenty-fourth part of the Quicksilver mine of New Almaden situated in the County of Santa Clara in this State, together with all the lands, tenements hereditaments privileges and appurtenances thereunto belonging. Also all and singular the Quicksilver now in possession or in expectancy which as owners of the three-twentieths of one *barra* of the said mine of New Almaden we now are or may become entitled to in any manner whatsoever, from the 10th day of September A. D. 1850, to the date of this Instrument, the aforesaid three-twentieths of one *Barra* of the said mine of New Almaden and appurtenances being the same conveyed to H. Laurencel by James Alexr. Forbes on the 10th day

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of September, A. D. 1850, and by said H. Laurencel conveyed to us, on the 22nd day of March A. D. 1851, recorded in Book of Deeds "C," page 330, in the Archives of Santa Clara County, and confirmed by said James A. Forbes and his wife to us, as per Deed of the same date, 22d day of March, A. D. 1851, recorded in book of Deeds 'C' page 368, in the same archives of Santa Clara county. To have and to hold the three-twentieths of one *Bara* of the said mine of New Almaden and appurtenances and all and singular the Quicksilver to the same belonging or appertaining unto the said Jose E. Fernandez his heirs or assigns to his and their own use and behoof for ever. And we the said James R. Bolton and Wm. Barron composing the firm of Bolton, Barron & Co., in this City do hereby covenant and agree to and with the said Jose E. Fernandez his heirs and assigns that the above described property is free from all incumbrances made incured, or suffered by us or any other person or persons whomsoever, by us authorised or empowered and we shall ours heirs executors or assigns warrant and defend the aforesaid property for ever unto the said José E. Fernandez, his heirs executors and assigns against the lawfull claims and demands of all persons claiming or to claim, by through or under us, but against none others.

In witness whereof we have hereunto set our hand and seal at San Francisco on this thirtieth day of April A. D. one thousand eight hundred and fifty-two.

JAMES R. BOLTON. [SEAL.]
WM. E. BARRON. [SEAL.]

Signed, sealed and delivered, in the presence of

LUC. HERMAN.

On this 30th day of April, A. D. 1852, before me a Notary public, duly commissioned & sworn for the County of San Francisco, personally came James R. Bolton & William Barron, known to me to be the persons described in and who executed the foregoing Instrument, & who acknowledged to me that they executed the same freely and voluntarily for the uses & purposes therein mentioned.

Witness my hand and seal at office.

LUC. HERMAN.
Not. Pub.

{ SEAL }

Filed 11 o'clock, A. M., May 10th, A. D. 1852.

JOHN M. MURPHY,
Recorder.

Recorded at the request of Marcelo Carero.

J. M. MURPHY,
Recorder.

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RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11th, A. D. 1857.

I hereby certify, that the foregoing, on pages 1, 2 and 3, of this, is a full, true and correct copy of an instrument of record in this office, recorded in book D, of Deeds, on pages 507 and 508.

Given under my hand and official seal, at the city of San José, the day and year last written.

SEAL

S. A. CLARK,
County Recorder.

[H. L. No. 11. "O. H. No. 40."]

DEED—J. E. FERNANDEZ TO J. F. DE LEON.

Know all men by these presents that I, Jose E. Fernandez, of the city of San Francisco State of California, for and in consideration of the sum of ($6000,) six thousand dollars to me in hand paid by Jose Francisco Leon of the same place the receipt whereof is hereby acknowledged, have granted bargained, sold, released, conveyed and transferred, and by these presents do grant bargain, sell, release, convey and transfer unto the said Jose Francisco Leon his heirs and assigns (3-20ths) Three-twentieths of one "*Barra*," or of one twenty-fourth part of the Quicksilver mine of New Almaden, situated in the County of Santa Clara, and State aforesaid, together with all the lands, tenements, hereditaments, privileges and appurtenances thereunto belonging, also all the Quicksilver now in possession or in expectancy which as owner of the said three twentieths of one "*Barra*" of the mine of New Almaden, I now am or may become entitled to in any manner whatsoever until this fourteenth day of April, A. D. one thousand eight hundred and fifty-three. The aforesaid three twentieths of one "*Barra*" of the said mine of New Almaden and appurtenances being the same conveyed to H. Laurencel by James Alexander Forbes on the 10th day of September, A. D. 1850, and by said H. Laurencel conveyed to J. R. Bolton and Wm. Barron on the 22d March, A. D. 1851, recorded in Book of Deeds 'C,' page 330, in the archives of Santa Clara County, and confirmed to them by said James A. Forbes and his wife as per deed of same date, 22d March, 1851, recorded in Book of Deeds 'C,' page 368, in the same archives of Santa Clara County, and conveyed to me the said J. E. Fernandez, by the said Bolton and Barron on the 30th day of April, 1852, as recorded in Book of Deeds D, page 507 by J. W. Murphy, Recorder. To have and to hold the Three twentieths of one "*Barra*" of the said mine of

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New Almaden and appurtenances, and all and singular the Quicksilver to the same appertaining or to me as owner thereof in anywise belonging, up to the date hereof, unto the said José Francisco Leon his heirs and assigns, to his and their sole and only proper use benefit and behoof forever. And I the said José Eusebio Fernandez do hereby covenant and agree to and with the said José Francisco Leon his heirs and assigns that the above described property is free from all incumbrances made incurred or suffered by me, or any other person or persons by me authorised or empowered and that I, my heirs executors and assigns shall and will warrant and for ever defend the aforesaid property unto the said José Francisco Leon his heirs and assigns against the lawful claims and demands of all persons claiming or to claim by through or under me or them, but against none other.

In witness whereof I have hereunto set my hand and seal at San Francisco this fourteenth day of April A. D. one thousand eight hundred and fifty-three.

JOSÉ E. FERNANDEZ. { SEAL }

Sealed and delivered in presence of

FREDK. GOERLITZ.

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO. } ss.

On this fourteenth day of April, A. D. one thousand eight hundred and fifty-three, personally appeared before me a Notary Public, in and for said County Jose E. Fernandez known to me to be the person described in and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year last above written.

{ SEAL }

WILL^M. NEWTON WEEKS,
Notary Public.

Filed for record at 4 o'clock, P. M., July 15th, A. D. 1853.

J. M. MURPHY,
Recorder,
By S. O. HOUGHTON,
Deputy.

Recorded at the request of J. F. Leon.

J. M. MURPHY,
Recorder,
By S. O. HOUGHTON,
Deputy.

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RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11, A. D. 1857.

I hereby certify, that the foregoing on pages 1, 2 and 3 of this, is a full, true and correct copy of an instrument, of record in this office, recorded in book F. of Deeds, on pages 216 and 217.

Given under my hand and official seal, at the city of San José, the day and year last written.

SEAL

S. A. CLARK,
County Recorder.

[H. L. No. 12. "O. H. No. 41."]

DEED—J. F. DE LEON TO JAS. A. FORBES—COPY.

Know all men by these presents, that I. José Francisco Leon, of the city of San Francisco, State of California, for and in consideration of the sum of Eight thousand dollars, to me in hand paid, by James Alexander Forbes, of the town and County of Santa Clara, State of California, the receipt of which is hereby acknowledged, have granted, bargained, sold, released, conveyed and transferred, and by these presents do grant, bargain, sell, release, convey, and transfer, unto the said James Alexander Forbes, his heirs and assigns (3-20th) three twentieths of one "barra," or of one twenty-fourth part of the quicksilver mine of New Almaden, situated in the County of Santa Clara, and State aforesaid, together with all the lands, tenements, hereditaments, privileges and appurtenances thereunto belonging. Also all the quicksilver now in possession, or in expectancy, which as owner of the three twentieths aforesaid, of one "barra" of the said mine of New Almaden, I now am, or may become entitled to, in any manner whatsoever, on this fourth day of August A. D. one thousand eight hundred and fifty three. The aforesaid three twentieths of one "barra" of the said mine of New Almaden and appurtenances, being the same conveyed to H. Laurencel, by James A. Forbes, on the 10th day of September A. D. 1850, and by the said H. Laurencel conveyed to J. R. Bolton and Wm. E. Barron, on the 22d of March A. D. 1851, recorded in Book of deeds C., page 330, in the archives of Santa Clara County, and confirmed to them by said James A. Forbes, and his wife as per deed of same date 22d March 1851, recorded in Book of deeds C., page 368, in the same archives of Santa Clara County; and by them the said Bolton and Barron conveyed to J. E. Fernandez on the 30th day of April 1852 as recorded in book of deeds D., page 507, and by him the said J. E. Fernandez, convey-

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ed to me the said José Francisco Leon by deed dated the fourteenth day of April 1853, recorded in Book of deeds F., pages 216 and 217, in the archives of Santa Clara County, by J. M. Murphy, Recorder. To have and to hold the said three twentieths of one "barra" of the said mine of New Almaden and appurtenances, and all and singular the quicksilver and ores to the same appertaining, or to me as owner thereof, in anywise belonging up to the date hereof, unto the said James Alexander Forbes, his heirs and assigns, to his and their sole and only proper use, benefit and behoof forever—And I the said José Francisco Leon, do hereby covenant and agree to and with the said James Alexander Forbes, his heirs and assigns, that the above described property is free from all incumbrances, made, incurred or suffered by me, or any other person or persons by me, authorized or empowered: and that I, my heirs, executors and assigns shall and will warrant and forever defend the aforesaid property unto the said James Alex^{r} Forbes, his heirs and assigns against the lawful claims and demands of all persons claiming or to claim by, through, or under me or them, but against none other. In witness whereof I have hereunto set my hand and seal this fourth day of August A. D. one thousand eight hundred and fifty-three, in the city of San Francisco.

J. FRAN^{CO} DE LEON. (SEAL)

Sealed and delivered in presence of

THOMAS BELL.

STATE OF CALIFORNIA,
County of San Francisco.

On the fifth day of August in the year of our Lord one thousand eight hundred and fifty-three, before me Joseph Grant, a Notary Public in and for the said County, duly commissioned and sworn dwelling in the City of San Francisco, personally appeared José Francisco de Leon, known to me to be the individual who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned.

In witness whereof I have hereto set my name, and affixed my official seal, the day and year above written.

(SEAL)

JOSEPH GRANT,
Notary Public.

Filed for record at 11½ o'clock A. M., August 8, A. D. 1853.
J. M. MURPHY, Recorder.
Recorded by F. LEWIS, Deputy.

Recorded at the request of J. A. Forbes.
J. M. MURPHY, Recorder,
By F. LEWIS, Deputy.

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RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA, May 11, A. D. 1857

I hereby certify, that the foregoing, on pages 1, 2, 3 and 4 of this, is a full, true and correct copy of an instrument of record in this office, recorded in Book F. of deeds, on pages 270 and 271.

Given under my hand and official seal, at the city of San José, the day and year last written.

(SEAL)

S. A. CLARK,
County Recorder.

[H. L. No. 13. "O. H. No. 42."]

DEED—J. A. FORBES TO W. E. BARRON—COPY.

Know all men by these presents, that I, James Alex^{r} Forbes, of the town and County of Santa Clara, State of California in consideration of the sum of Thirty-five Thousand dollars to me in hand paid by William E. Barron of the City and County of San Francisco, and State aforesaid the receipt whereof I hereby acknowledge have bargained sold and quit-claimed and by these presents do bargain sell and quit-claim unto the said William E. Barron and to his heirs and assigns forever, all my right title interest estate claim and demand, both at law and in equity and as well in possession as in expectancy of in and to one "Barra," or one twenty-fourth share of the Quicksilver Mine of New Almaden, situated lying and being in the County of Santa Clara and State aforesaid with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

In witness whereof, I have hereunto set my hand and seal, the thirtieth day of March, A. D. eighteen hundred and fifty-five.

JAS. ALEX. FORBES. (SEAL)

Sealed and delivered in presence of

E. S. BENSON.

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STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On this thirty-first day of March, A. D. one thousand eight hundred and fifty-five, before me Edward S. Benson a Notary Public in and for said County personally appeared Jas. Alexander Forbes to me known to be individual described in and who executed the annexed instrument and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

E. S BENSON,
Notary Public.

(SEAL)

Filed for record at request of Wm. E. Barron, at 10¾ o'clock A. M., April 2d, A. D. 1855.

S. A. CLARK, Recorder.
By F. LEWIS, Deputy.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, }
CALIFORNIA, May 11, A. D. 1857. }

I hereby certify, that the foregoing, on pages one and two of this, is a full, true and correct copy of an instrument, of record in this office, recorded in Book G. of deeds, on page 498.

Given under my hand and official seal, at the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.

(SEAL)

[H. L. No. 14.]

DEED—J. A. FORBES TO W. E. BARRON—COPY.

Know all men by these presents, That I, James Alex. Forbes, of the town and County of Santa Clara, State of California in consideration of the sum of Thirty Thousand Dollars to me in hand paid by William E. Barron of the city and county of San Francisco and State aforesaid, the receipt whereof I hereby acknowledge, have bargained sold and quit-claimed and by these presents do bargain sell and quit-claim unto the said William E. Barron and to his heirs and assigns forever, all my right title interest estate claim and demand both at law and in equity, and as well in possession as in expectancy of, in,

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and to, One Barra, or one twenty-fourth share of the Quicksilver Mine of New Almaden situate lying and being in the said County and State, including all my right title interest estate claim and demand both in law and in equity as well in possession as in expectancy to the tract of land granted by the President of Mexico to Andres Castillero, on the 20th day of May A. D. 1846, described in the order or decree issued by the Minister of Foreign Relations on the 23d May 1846, and directed to the Governor of California being two leagues of land situate in the County and State aforesaid; the same one twenty-fourth share being that which was heretofore conveyed by me to the said William E. Barron, on the Thirtieth day of March 1855, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof I have hereunto set my hand and seal the 29th day of May A. D. eighteen hundred and fifty-five.

JAS. ALEX. FORBES. (SEAL)

Sealed and delivered in presence of

E. S. BENSON.

STATE OF CALIFORNIA, } ss
County of San Francisco. }

On this twenty-ninth day of May A. D. one thousand eight hundred and fifty-five before me Edward S. Benson a Notary Public in and for said County, personally appeared James Alex. Forbes, to me known to be the individual described in and who executed the annexed instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

(SEAL)

E. S. BENSON,
Notary Public.

Filed for record (at request of S. Hamilton) at $9\frac{30}{60}$ o'clock A. M., June 8th, A. D. 1855.

S. A CLARK, Recorder.
By F. LEWIS, Deputy.

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, }
CALIFORNIA, May 11, A. D. 1857. }

I hereby certify, that the foregoing, on pages one and two of this,

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is a full, true and correct copy of an Instrument, of record in this office, recorded in Book G. of Deeds, on pages 523 and 524.

Given under my hand and official seal, at the City of San José, the day and year last written..

(SEAL)

S. A. CLARK,
County Recorder.

[H. L. No 15. "O. H. No. 44."]

DEED—YECKER TORRE & CO. TO BARRON FORBES & CO.

En la ciudad de Mexico á siete de Diciembre de mil ochocientos cincuenta y dos, ante mi el Escribano Nacional y publico del numero y testigos, que se espresaran, comparecieron los Señores Yecker Torre y compañia de esto comercio, de una parte; y de la otra el Señor Don Eustaquio Barron, en representacion de su casa de "Barron Forbes y Compañia," de Tepic por la que presta caucion de rato, et grato y a mayor abundamiento ofrece que se ratificara, alla este contrato, o bien presentara dentro de un mes poder bastante en esta capital, para efectuar la dicha ratificacion; vecinos los Señores comparentes de esta misma capital a quienes doy fe conozco y dijeron; que los Señores Yecker Torre y Ca. tenian en la mina y negociacion de azogue llamada el Nuevo Almaden, sita en la mision de Santa Clara de la Alta California, tres acciones y media aviadoras de la doce de esta clase en que esta dividida la propiedad, y cuatro acciones once decimas cuartas que forman el total de las acciones aviadas; cuya propiedad consta de los respectivos, contratos é instrumentos y de los recibos de los pagos que han hecho, asi como de las cuentas del avio; y que en conseqencia de su dominio y propiedad, hicieron en veinte y siete de Noviembre procsimo pasado a los Señores Barron Forbes y Ca. la venta de las espresadas acciones por el contrato que me exhiben en este acto, y es a la letra como siguie Contrate:

Los Señores Yecker Torre y Ca. venden a los Sres Barron Forbes y Ca. sus cuatro y once decimas cuartas partes ($4\frac{11}{14}$ de accione aviadas y las tres y media ($3\frac{1}{2}$) acciones aviadoras de la mina de N. Almaden en la Alta California, y los dividendos que a dichas acciones correspondan, y ademas su interes en la casa de comercio de los Sres Bolton Barron y Ca. de San Francisco de California, por la cantidad de trescientos ochenta mil pesos fuertes (380,000$) pagaderos en esta capital del modo siguiente:

Ciento ochenta mil pesos (180,000$) al contado q^{e} se compensaran

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con igual cantidad qe poco mas ó menos existe ya en manos de los vendedores pertenecientes á la negociacion de las espresada mina.

Cien mil pesos (100,000$) a los tres meses, y cien mil pesos (100,000$) a los seis meses contados desde esta fecha.

Los Señores Yecker Torre y Ca. daran cuenta a los Sres Barron Forbes y Ca. de todo el azogue que les ha sido consignado ya sea poniendo a la disposicion de los segundos las existencias que hubiere en su poder ó en el de sus corresponsales, ó entregando las cuentas de las cantidades que ellos o aquellos hubiesen vendido con posterioridad á la ultima cuenta que tienen remitida a San Francisco, sea en fin en reales por las ventas de plazo vencido.

Los Señores Yecker Torre y Ca. quedan mediante esta venta escentos de saneamiento en cualquier caso, y sin responsibilidad de ninguna clase por lo pasado y por lo futuro tanto respecto de la mina de N. Almaden como respecto, de la casa de San Francisco, y solo contribuiran con su parte en los gastos de la mina hasta treinta de Septiembre procsimo pasado conforme á la cuenta de avio qne los Señores Bolton Barron y Ca. les han pasado en la misma fecha. En este contrato no se comprende las demas cuentas que existen entre la casa de San Francisco y los Sres Yecker Torre y Ca., quienes satisfaran el saldo de las mismas si fuese en su contra, ó lo percibiran si resultare a su favor.

Los Sres Yecker Torre y Ca. ceden a los Sres Barron Forbes y Ca. a costo y costas diez mil (10,000) frazcos para azogue que ienen pedidos á Ynglaterra. Al efecto los Sres Yecker Torre y Ca. entregaran en esta los conocimientos que tienen en su poder ya por cinco mil (5,000) frazcos, y daran orden a sus corresponsales de Londres de entregar el resto á medida que se vaya, concluyendo. Por su parte los Sres Barron Forbes y Ca. encargaran a sus corresponsales de pagar a los Sres Finlay Hodgson y Compañia de Londres, el importe y demas gastos, relativos a dichos diez mil frazcos.

Para seguridad de las partes interesadas se otorgará una escritura publica en las firmas legales y acostumbradas, cuya escritura servira de titulo de propiedad á los Señores compradores y a los Sres vendedores de documento para el cobro del importe de la venta.

Cualquiera duda o diferencia que ocurriese sobre la interpretacion de los Articulos de este contrato, y de la escritura mencionada en el articulo anterior, ó en la ejecucion de lo que uno ú otro disponen, se decidira por dos arbitros nombrados uno por cada parte, y en caso de discordia por un tercero que eligiran dichos arbitros.

Hecho doble a Mejico a veinte y siete de Noviembre de mil ochocientos cincuenta y dos.

p. Barron Forbes y Ca. EUSTAQUIO BARRON.

YECKER TORRE Y CA.

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ARTICULO ADICIONAL.

Para mayor claridad se declara que por las palabras de una escritura en las formas legales y acostumbradas, queda entendido que las cosas vendidas estan especialmente hipotecadas a la seguridad del pago de su precio, asi como este al puntual cumplimiento de las obligaciones que contraen los Sres vendedores sin perjuicio de la hipoteca general.

YECKER TORRE Y CA.

Sigue: Que debiendo en cumplimento del preinserto contrato proceder al otorgamiento de la escritura segun en el se contiene poniendola en efecto, en aquella via y forma que mas en derecho haya lugar, y que mas firme y valedera sea, otorgan los espresados Señores, Yecker Torre y Ca.

Que en los terminos y bajo las condiciones que quedan asentados en la insercion del mencionado contrato, de viente y siete de Noviembre ultimo, venden a los Sres Barron Forbes y Ca. para ellos y sus sucessores, y para los quede ellos tengan titulo ó causa para siempre y sin reserva alguna, las tres y media acciones aviadoras y las cuatro y once decimas cuartas partes de las aviadas, segun queda espresado, asi como les venden, tambien la parte que tenian en la casa de comercio de San Francisco de la Alta California establecida bajo el razon de Bolton Barron y Ca. con el capital de sesenta mil mil pesos que pusieron por mitad la casa de los Sres Yecker Torre y Ca., y la de los Sres Barron Forbes y Ca. é igualmente les venden diez mil frazcos para azogue todo en cantitad de trescientos ochenta mil pesos, y ademas el costo y costos de los frazcos para azogue; cuyas ventas comprenden todo lo que a la parte de los Señores Yecker, Torre y Ca. tocaba y pudiera tocar hasta fecha del contrato de veinte siete del mes pasado, sustituyendo los vendedores a los compradores en su lugar y cediendoles en los terminos espresados; sus acciones tal como las poseen, sin prestar saneamiento, y sin responsibilidad de ninguna clase por lo pasado y por lo futuro, tanto respecto de la mina de N. Almaden, como respecto de la casa de San Francisco. Que en consequencia de las respectivas obligaciones que por el repitido contrato han estipulado, mutuamente los Sres Yecker Torre y Ca. se desisten, quitan y apartan del derecho dominio, propiedad y possesion de las espresadas acciones aviadas y aviadoras del N. Almaden, del dominio, propriedad y posesion a la parte de la negociacion de San Francisco y del que tenian por compra de los diez mil frazcos, para azogue; y traspasan todos los espresados derechos á los Señores Barron Forbes y Ca. para ellos y sus succesores, con la plena propriedad y

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posesion y con todos sus acciones reales, personales, utiles, mixtas, directas, ejecutivas y demas que les corresponden, para que perciban todo lo que de las espresadas negociaciones y cosas debieran percibir los otorgantes, si no hubieran hecho esta venta, incluso el procsimo dividendo cuya cuenta se esta haciendo, el producto de todas las ventas hechas y por hacia de los azogues esplotados beneficiados y por beneficiar hasta la fecha del contrato y de las utilidades habidas en la casa de comercio de Bolton Barron y Ca. hasta la misma fecha y de alli en adelante quedando comprendido en esta cecion y venta de derechos, todo cuanto por los de los otorgantes les pudiere corresponder en las negociaciones sea raiz mueble y semoviente. Se obligan los referidos Señores Yecker Torre y Ca. á dar cuenta de todo el Azogue que han recibido para su venta y a entregar a los Sres Barron Forbes y Ca. todo el producto de las ventas con retencion de ciento ochenta mil pesos por el primer abono en pago del precio de la venta á que se contrae esta escritura, y a poner a su disposicion los documentos de creditos procedentes de las ventas hechas a plazo de dicho azogue que les estaba consignado, y el azogue mismo no vendido existente para lo cual declaran haber librado ya ordenes oportunas se obligan por ultimo a entregar a Barron Forbes y Ca. el importe de los gastos de la negociacion del Nuevo Almaden en la parte que en ellos les tocaba hasta treinta de Setiembre de este año conforme a la cuenta que hasta esta fecha pasaron los Sres Bolton Barron y Ca. y el Sor Don Eustaquio Barron en representacion de los Sres Barron Forbes y Ca. acepta la venta y cecion de las acciones del Nuevo Almaden, la del interes en la casa de California, y la de los diez mil frazcos para azogue en los terminos y y bajo las condiciones que van asentadas, y que por dicha casa se oblija a hacer el pago de los trescientos ochenta mil pesos en los terminos y plazos referidos y consiente en que los Sres Yecker Torre y Ca., quedan libres de la eviccion y sanemiento por todo lo pasado y lo futuro concerniente á la compañia y negociacion del Nuevo Almaden y a la casa de Bolton Barron y Ca. de San Francisco sin perjuicio de la obligacion de los Señores, Yecker Torre y Ca. de saldar y cubrir sus cuentas particulares pendientes con la misma casa de San Francisco, y a pagar el costo y costos de los frazcos para azogue, como se espresa en el contrato de veinte y siete de Noviembre procsimo pasado, cuyos pagos haran en esta ciudad sin falta, escusa, ni demora alguna y precisament en pesos fuertes de plata del cuño corriente mexicano; y para su seguro y sin que se entienda que la obligacion general de bienes deroga ni perjudica la especial, ni por el contrario esta á aquella pues los Sres Yecker Torre y Ca. podran usar de la que mejor les agrade, hipoteca el Sor Barron por su casa de Barron, Forbes y Ca. las barras y acciones que ha comprado en la citada mina del Almaden y demas cosas que se espresan en la presente escritura, queriendo que esta hipo-

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teca especial surta todos los efectos legales para la siguridad de los vendedores con condicion de que ó presentara poder en el termino de un de mes de su casa de Barron Forbes y Ca., ó ratificara esta el contrato que aqui se contiene. Ya la observancia, guarda y cumplimiento de lo relacionado se obligan los Señores Yecker Torre y Ca. con sus bienes presentes y futuros, y el Señor Barron con los de su casa a quien representa, habidos y por haber y con ellos se someten al fuero y jurisdiccion de los Sres Jueces que de sus causas, puedan y deban conforme a derecho conocer para que á lo dicho les compelan y estrechan como si fuera por sentencia consentida y pasada en autoridad de cosa jusgada; renuncian las leyes de su favor y defensa con la general del derecho.

Asi lo octorgaron y firmaron siendo testigos Don Crescencio Landgrave, Don Francisco Lara, y Don Antonio Ferreiro, de esta vecinidad; doy fé

YECKER TORRE Y Cª.
EUSTAQUIO BARRON.

RAMON DE LA CUEVA, Escribº Nacional y Publico.

Sacose parte de los Sres vendedores despues de su otorgamiento: y va en siete fojas, la primera del sello primero, y las demas del cuarto bienio corriente corregido: doy fé.

RAMON DE LA CUEVA,
E.N. y P.

Los Ynfrascritos Escribanos, Certificamos y damos fé; que Don Ramon de la Cueva es Escribano Nacional y Publico de los del numero de esta Capital y suyos el signo y firma con que autoriza el anterior testimonio; y a cuanto con ellos legaliza se le ha dado y da entera fé y credito en juicio y fuera de el.

Y para que conste ponemos la presente sellada con el de nuestro Nacional Colegio, en la Ciudad de Mexico aonce de Diciembre de mil ochocientos cincuenta y dos.

{SEAL} † † †

MM. FV. CL.

Manuel de Mendarioma. Fermin Villa. Crescent Landgrave.

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No. 1864.—Consulate of the United States of America, Mexico, December 15, 1852.

I, the undersigned, Consul of the United States of America for the city of Mexico, hereby certify, that the signatures of Manuel Mudanaga, Crescentº. Landgrave and Fermin Villa, subscribed to the foregoing certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their like official acts, who are all well known to me, and were at the time of subscribing their respective names, duly authorized Notary' Public of this city, and that all their official acts either jointly or separately, are entitled to full faith and credit as such.

In testimony whereof, I have hereunto set my hand and official seal, the day and year first above written.

{ Seal }

JOHN BLACK,
Consul.

Register F, folio 288.
Dis. 4 ps.

Filed for record at 8½ o'clock P. M., January 18th, 1853.

J. M. MURPHY, Recorder.
By S. O. Houghton, Deputy.

Recorded at the request of R. Walkinshaw.

J. M. MURPHY, Recorder.
By S. O. Houghton, Deputy.

Recorder's Office, County of Santa Clara, California, July 30, A. D. 1857.

I hereby certify, that the foregoing on pages 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of this, centains a true and correct copy of an Instrument, now of record in this office, and recorded in Book F of Deeds, pages 42, 43, 44 and 45.

Witness my hand and official seal, at office in the city of San José, the day and date last written.

{ Seal }

S. A. CLARK, County Recorder.
By Geo. M. Yoell, Deputy.

Filed, August 20, 1857.

W. H. CHEVERS,
Clerk.

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NOTICE TO PRODUCE PAPERS.

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES, Appellants,
vs.
ANDREAS CASTILLERO, Appellee.

D. C. No. 420.
L. C. No. 366.

You will take notice that you are required to produce before the trial of this case, the originals of the following papers, to wit:

1. Four acts of sale each of one barra made at Tepic, by José Castro to Alexander Forbes, and dated respectively, March 1, 1847; April 12, 1847; April 16, 1847; May 10, 1847; with all the certificates and endorsements thereon, as appearing of record in the office of the Recorder of Santa Clara county.

2. Act of sale by Secundino Robles and Teodoro Robles, to Alexander Forbes, of two barras, before Ygnacio Alvisu, Justice of Peace, dated September 14, 1847.

3. Act of sale by Andres Castillero, by his attorney-in-fact Padre Real, to Alexander Forbes, of three barras, dated December 27, 1847.

4. Another act of sale of two barras, by Secundino Robles and Teodoro Robles, by their attorney-in-fact, James Alexander Forbes, to Robert Walkinshaw, date April 14, 1848.

5 Act of sale of one barra, by Padre Real to Robert Walkinshaw, dated August 9, 1849.

6. Power of attorney of Alexander Forbes to James Alexander Forbes, dated April 23, 1849.

7. Act of sale of one barra, James Alexander Forbes to John Parrott, August 9, 1850.

8. Act of sale of 3-20ths of one barra, by James Alexander Forbes to Henry Laurencel, dated September 10, 1850.

9. Sale of 3-20ths of one barra, by Henry Laurencel to Bolton & Barron, dated March 22, 1851.

10. Sale of 3-20ths of one barra by Bolton & Barron to J. E. Fernandez, dated April 30, 1852.

11. Sale of 3-20ths of one barra, by J. E. Fernandez to J. F. Leon, dated April 14, 1853.

12. Sale of 3-10ths of one barra, J. F. Leon to James Alexander Forbes, dated August 4, 1853.

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13. Sale of one barra, by James Alexander Forbes to Wm. E. Barron, dated March 30, 1855.

14. Same to same, dated May 29, 1855.

15 Sale of all the interest of Jecker, Torre y Compania to Barron, Forbes y Compania, dated Mexico, December 7, 1852.

And secondary evidence of the existence and contents of said papers will be given and used on the trial if you fail to produce said originals.

San Francisco, August 20, 1857.

P. DELLA TORRE,
U. S. Dist. Att'y.

To Messrs. Halleck, Peachy & Billings,
Attorneys of Andres Castillero.

Rec'd a copy of the within, August 20, 1857.
HALLECK, PEACHY & BILLINGS,
Attorneys for Claimant.

Filed August 21, 1857.

W. H. CHEVERS,
Dep. Clerk.

[O. H. No. 51.]

CERTIFIED COPY OF BILL AND ANSWER FROM U. S. CIRCUIT COURT.

To the Honorable, the Judge of the District Court of the United States for the Northern District of California:

Maria Zaede Bernel Berreyesa, widow of José Reyes Berreyesa, deceased, Maria del Carmen Berreyesa, and her husband, Lorenzo Penedo, Loreta Berreyesa, and her husband, Juan Bejoquis, Santiago Berreyesa, José de los Santos Berreyesa, Nemisio Berreyesa, Francisco Berreyesa, Fernando Berreyesa, Magadina Berreyesa, and her husband, Mariano Fernandez, and José Encarnacio Berreyesa, heirs at law of José Reyes Berreyesa, deceased; also, Richard Roman, James Hepburn, Charles Stuart and Isaac N. Thorn, citizens of the State of California, and residents of said Northern District, bring this their bill against Alexander Forbes, Eustace Barron, William Forbes and Eustace W. Barron, who are aliens—subjects of the Crown of Great Britain, and resident in the Republic of Mexico; Isidoro de la Torré and J. B. Jeckxier, who are also aliens, citizens of and residents in the Republic of Mexico; Martin la Peidra and Francis

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Maria Ortezy, who are aliens resident in the City of Mexico; James A. Forbes and Robert Walkinshaw, who are also aliens, now resident in this State, in the County of Santa Clara, and John Parrot, who is a citizen of the State of Virginia, now in the City of San Francisco, in this State.

1st. And thereupon your orators and oratrixes complain and say: 1st. That the said widow and the said Maria, Loreta, Santiago, José, Nemisio, Francisco, Fernando, Magdalina and José Encarnacion, the children and heirs of said José Reyes, deceased, are lawfully seized and possessed of a certain tract of land in the State of California, situate in the County of Santa Clara, known as the Rancho de la Cañada de los Capitancillos, *alias*, Rancho of San Vicente, and bounded on the north by the low hills near the lands of the Pueblo of San José; on the south by the Sierra; on the east by the Laurel hills, and on the west by the Rancho of Justo Larios, which western line commences at the angle formed by the junction of the Arroyo Seco and Alamitos Creek, and runs thence south by the eastern slope of the hills in the centre of the valley, to the Sierra: the whole of said tract of land within said boundaries was duly granted to the said José Reyes Berreyesa during his lifetime, viz: on the 20th day of August, 1842, by Juan B. Alvarado, then Governor of California; said grant was also duly recorded; for five years previous to said grant, said José Reyes had been in continued possession of said tract of land, was then, and ever afterwards until the time of his death, in the year 1847, continued to be in the actual possession thereof, as the absolute owner in good faith.

2d. That sometime in the year 1847, the said José Reyes departed this life, leaving his said widow him surviving, and his said children heirs at law, seized and possessed of the said lands and appurtenances by descent.

3d. That your orators, the said Roman, Hepburn, Stuart and Thorn, became and are the lessees of all the quicksilver minerals and mines, with the appurtenances, on said tract of land, for a term of twenty years from and after the 12th day of July, A. D. 1850, by a written contract of lease duly made and delivered on that day, by said widow and heirs of the said José Reyes, deceased, to said lessees; in which contract, however, the name of your orator, Thorn, was, by mistake omitted; all which will more fully appear by reference to said written contract of lease herewith filed, marked Exhibit A., and prayed to be taken as part of this bill.

4th. Your orators and oratrixes further show that on the — day of ——, 1847, the defendants did wrongfully and forcibly enter upon and take possession of a large and valuable portion of said tract of land, viz: all that portion thereof lying west of the Arroyo de los Alamitos, with a tract east of and along said Arroyo of half a mile in

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width to the Sierra, on both sides of said Arroyo; a map or diagram whereof is herewith filed as part of this bill, marked Exhibit B. That the defendants have erected buildings, lime-kilns, forges and furnaces thereon, wrongfully, and without the consent of your orators and oratrixes, or any of them; they have in like manner cut down and destroyed large numbers of valuable growing trees thereon; they have opened quarries and removed therefrom large quantities of lime, of great value, and converted the same to their own use; they have opened extensive mines of cinnabar, and have removed therefrom large quantities of quicksilver, of great value, and have sold the same, to the great damage of your orators and oratrixes, in the sum of at least one million of dollars.

5th. Your orators and oratrixes further show that in the District Court of this State, of the third Judicial District, for the County of Santa Clara, they did on the —— day of September, 1850, institute suit against the defendants to recover possession of that part of the tract of land aforesaid so wrongfully seized and upon which the trespasses as aforesaid had been committed by the defendants, and to recover damages for said trespasses: That on the —— day of ——, 1852, upon the application of the defendants therein previously presented, an order was made by said District Court of said State to remove said cause therefrom to the District Court of the United States for the Northern District of California, sitting as a Circuit Court in the Town of San José, in the County of Santa Clara; that the Federal District Court aforesaid now has jurisdiction of said cause, and that the same is still pending and undetermined.

6th. Your orators and oratrixes are informed, believe, and charge to be true, that said defendants having formed a company to work said mines ("New Almaden Mines"); that, disregarding the rights of your orators and oratrixes in the premises, they have continued to the present time to commit trespasses as aforesaid upon said land, in the destroying of timber, in opening the earth, and in taking therefrom cinnabar in large quantities, viz: sufficient in amount to produce at least two thousand pounds of quicksilver daily.

7th. That said defendants, well knowing that they have no just right to said land, or to the timber, stone, and mines thereon, have been using exertions by various pretences and subterfuges to produce delay, and have succeeded in producing great delay in the progress of said action of ejectment and for damages, and in the mean time they are assiduously engaged in their mining operations as aforesaid, and in the most secret but expeditious manner practicable, they are removing the quicksilver taken therefrom, and through the assistance of each other, their agents and confederates, are conveying the same out of the limits of this State, and beyond the jurisdiction of this Court, and selling the same.

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8th. Your orators and oratrixes are informed, believe, and charge that the proceeds of the sales of said quicksilver amounts to about the sum of $1000 per day, and that said defendants are fraudulently retaining said proceeds beyond the jurisdiction of this Court, or concealing the same; that the defendants have not, as your orator and oratrixes are informed, believe, and charge to be true, visible property within reach of the process of this Court, or subject thereto, sufficient to satisfy and discharge the damages which the complainants are justly entitled to recover in their said action at law, or even one-fourth part thereof; and that unless the defendants are restrained by the interposition of your Honor from the commission of further trespasses as aforesaid, and from removing, selling, or otherwise disposing of the products of said mines now within the jurisdiction of this Court, they will sustain great and irreparable injury in the premises.

9th. Your orators and oratrixes are informed, believe, and charge, that there is now in the possession of said defendants, or under their control, within the Counties of Santa Clara and San Francisco, about 500,000 pounds of quicksilver, of the value of fifty cents per pound, the products of said mines, ready to be shipped, and which the defendants are preparing to ship to some foreign country to be sold, and that they will so do, unless restrained therefrom by injunction.

10th. The premises considered, your orators and oratrixes pray that said Alexander Forbes, Eustace Barron William Forbes, Eustace W. Barron, Isadoro de la Torre, J. B. Jeiker, Martin la Piedra, Francis Maria Ortezy, James A. Forbes, Robert Walkinshaw and John Parrott, be made parties defendant to this Bill of Complaint, and as such, be required upon their corporal oaths, full, true, and perfect answers to make, according to the best of their and each of their knowledge, information and belief, to all and singular the severrl allegations and charges in this Bill contained; particularly that they answer and say:

1st. Whether the allegations firstly set forth in this Bill are not true;

2d. Whether the allegations secondly set forth in said Bill are not true;

3d. Whether the allegations thirdly set forth in said Bill are not true;

4th. Whether they did not enter upon said lands as is fourthly alleged in said Bill, and if so, when? and,

5th. Whether such entry was not made without any right or lawful authority on their part; and if under any pretended authority, let them produce and show the same; and,

6th. Whether they have not opened quarries and mines, and removed limestone and cinnabar therefrom, also cut down and destroyed trees upon said land, as is stated in the fourth allegation, and,

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7th. Whether said trees, limestone, and quicksilver have not been of the value of one million of dollars, as charged in the Bill; and,

8th. Whether the complainants have not instituted an action at law, as set forth fifthly in said Bill, and whether said action has not been removed to the Federal Court, as therein stated; and,

9th. Whether the allegations sixthly set forth in said Bill are not true; and,

10th. Whether the allegations and charges seventhly set forth in said Bill are not true; and,

11th. Whether the proceeds of said mining operations have not amounted to the sum of one million of dollars, and if not, then what is the aggregate sum? and,

12th. Whether the proeeeds of said mines are not of the value of abont $1000 per day, and if not, then what? and,

13th. Whether they have not in their possession or under their control, in the City of San Francisco, a large quantity of quicksilver, and if yea, how much, and of what value? and,

14th. Whether they heve not, in like manner, a large quantity of quicksilver in the County of Santa Clara, and if yea, of what value? and,

15th. Whether they are not preparing to convey the same abroad for sale.

Your orators and oratrixes pray that, if necessary, an account may be taken of the value of the timber so cut and destroyed upon said land, also of the lime and quicksilver taken from the quarries and mines thereon, as your Honor may order and direct; that the defendants, their agents and confederates, may be enjoined from committing any further trespasses on said land, and from removing, selling, or otherwise disposing of the Cinnabar or quicksilver now in this State and in their possession or under their control, until the action at law aforesaid can be heard and determined, or until the order of your Honor to the contrary:

That a receiver may be appointed to take charge of the said mines and all the products thereof, now within the jurisdiction of this Honorable Court, together with all the appurtenances belonging thereto, with such powers, orders, and instructions in the premises as to your your Honor may seem proper in that behalf.

May it please your honor to grant a writ or writs of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants, their agents, confederates, &c., to restrain them from removing, selling, or otherwise disposing of the products of said mines, and all further trespasses, &c.; also, that a writ or writs or writs of subpœna commanding them at a certain day, and under a certain pain, to appear and answer as aforesaid.

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And your orators and oratrixes pray for any and all other such further relief in the premises, as to your Honor may seem meet.

CHS. V. STUART,
ISAAC N. THORNE.

DISTRICT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Before John A. Monroe, a Commissioner of said Court, in the City of San Francisco, the above named complainants, Charles V. Stuart and Isaac N. Thorne, being duly sworn, depose and say, that the matters and things set forth in the foregoing Bill, as of the knowledge of the complainants, are true, and those stated as upon their information, these affiants believe to be true.

JNO. A. MONROE,
U. S. Commissioner.

Here follows Exhibit B.

(Endorsed.)
Filed March 12, 1852.

JNO. A. MONROE, Clerk.

Filed July 25, 1856.

GEO. PEN. JOHNSTON, Clerk.

I, Geo. Pen. Johnston, Clerk of the Circuit Court of the United States for the District of California, do hereby certify the foregoing to be a true, full and corect copy of the original Bill in the above entitled cause on file in my office.

Witness my hand and the seal of said Court, this 21st day of August, A. D. 1857.

ATTEST:

GEO. PEN. JOHNSTON.
Per
CUTLER MCALLISTER, D. C.

(SEAL)

In the Circuit Court within and for the Northern District of California, United States of America.

IN EQUITY.

The answer of Alexander Forbes, Eustace Barron, William Forbes, Eustace W. Barron, Isidoro de la Torre, Juan B. Jecker, Martin la

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Peidra, Francisco Maria Ortez, James A. Forbes, Robert Walkinshaw and John Parrott, (whose citizenship and places of residence are correctly stated in the complainants' Bill,) to the Bill of Complaint of Maria Z. Bernal Berreyesa, widow of José Reyes Berreyesa, deceased, Maria del Carmen Berreyesa, and others, complainants.

These defendants, and each of them, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said Bill of Complaint contained, for answer thereunto, or unto so much and such parts thereof as the defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

1. They are informed, and believe it to be true, that the said Maria Z. Bernal Berreyesa, alleged to be the widow of José Reyes Berreyesa, is such widow, and the said Maria, Loreta, Santiago, José, Nemisio, Francisco, Fernando, Magdalina and José Encarnacion, alleged to be the children of said José Reyes Berreyesa, are such children, and together are the heirs of said José Reyes Berreyesa, now deceased; but they are informed, and believe that it is not true, and deny, that said widow and children are lawfully seized and possessed of a certain tract of land in the State of California, situate in the County of Santa Clara, known as the Rancho de la Cañada de los Capitancillos, *alias* Rancho of San Vicente, and bounded "on the north by the low hills near the lands of the Pueblo of San José; on the south by the Sierra; on the east by the Laurel hills, and on the west by the Rancho of Justo Larios, which western line commences at the angle formed by the junction of the Arroyo Seco and Alamitos Creek, and runs thence south by the eastern slope of the hills in the centre of the valley to the Sierra."

And they are informed, and believe that it is not true, and therefore deny, that the whole or any part of said tract of land was duly granted to the said José Reyes Berreyesa during his lifetime, viz: on the 20th day of August, A. D. 1842, by Juan B. Alvarado, then Governor of California.

They are informed, and believe it to be true, that José Reyes Berreyesa was in the occupation of a portion, and claimed possession of a tract of land called Cañada de los Capitancillos, *alias* San Vicente, from the year 1845 to the time of his death, in 1847; but they are informed, and believe it is not true, and deny, that during said period, or any part thereof, he was in the possession or occupation, or claimed possession of any portion of the land now alleged by the complainants

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to be wrongfully in the possession of the defendants, and a part of the said San Vicente tract.

And the defendants further answering, say that they do not know, and have not been informed, save by the complaiuants' bill, and cannot set forth as to their belief or otherwise, whether the said José Reyes was in possession of said San Vicente tract, or any portion thereof, previous to the said year of 1845.

And the defendants further answering, say, that the document pretended to be a grant by which the complainants pretend that the said San Vicente tract was granted to said José Reyes by Juan B. Alvarado, was exhibited to the counsel of the defendants in the suit at law referred to in said Bill, who are the counsel of these defendants; and these defendants are informed and believe, and so charge, that at the time the same purports to have been executed by Juan B. Alvarado, as Governor of California, he had no authority to make such grant, and was not Governor of California; that the said pretended grant had never been confirmed by the legislative body of the Department of California, nor by the Supreme Government of Mexico; that such confirmation was required by the laws of Mexico in force in California at the time said grant purports to have been made, and was one of the conditions incorporated in said grant, as a condition precedent to its validity; that the said pretended grant is otherwise incomplete and wholly void in law.

And the defendants further answering, say, that they are not informed whether the boundaries of the said San Vicente tract mentioned in the said pretended grant are correctly stated and named in the first section of the complainants' Bill; but they are informed and believe, and so charge, that the said boundaries as stated in said bill are not correctly traced and laid down in the map or plan attached to said bill; that they are made to include not far from five square leagues of land, while the defendants are informed and believe, and so charge, that the said pretended grant is only for one square league; that the complainants, for the purposes of litigation, and to annoy the defendants—arbitrarily doing violence to the terms and construction of said pretended grant to José Reyes Berreyesa, and as defendants are informed and believe, to the natural land-marks of the region, to the possession of the said José Reyes Berreyesa, his construction of the said pretended grant, and his declarations concerning the same, and the possession, construction, and declaration of his widow and children, up to the time of bringing the suit at law in said Bill mentioned, and the declarations of said widow and some of the children since the conveyance of said suit—have assumed and laid down the boundary lines of said San Vicente tract where in law and in fact they are not, and particularly have done so by making the boundaries of said

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San Vicente include any of the land alleged in the Bill to be in possession of the defendants.

And of the said so called Vicente tract of land, as set forth in the said plan or map attached to said bill of complaint, or as including the land alleged to be in the possession of the defendants, the defendants are informed and believe it is not true, and deny, that the said José Reyes Berreyesa was ever seized of the same either in law or in fact.

2. The defendants are informed, and believe it to be true, that, as stated in said Bill, the said José Reyes Berreyesa departed this life sometime in the year 1847—leaving his said widow and children him surviving; but they are informed and believe it is not true, and deny that he left them seized and possessed, either in law or in fact, of any tract of land called San Vicente, as attempted now by the complainants to be located and bounded, or of any tract of land including within its limits the lands now alleged to be in possession of the defendants; though they are informed and believe that he left them seized and possessed in fact of a tract of land called San Vicente, separate and distinct from the land alleged to be in the possession of the defendants and called New Almaden.

3. The defendants further answering, say that they have been informed and believe that the said complainants, Roman, Hepburn, Stuart and Thorne, have pretended to make some agreement with the widow and children of the said José Reyes, deceased, relative to the tract of land called San Vecinte, or *Cañada de los Capitancillos*, but whether the said pretended agreement is a lease, whether the same is correctly stated and set forth in Exhibit A., of complainants bill, whether the same was ever executed by the said widow and children, and whether thereby the said Roman, Hepburn, Stuart and Thorne became and are the lessees of all the quicksilver minerals and mines, with the appurtenances, on said tract of land, for the term of twenty years from and after the 12th day of July, A. D., 1850, they are not informed save by the said complainants' said bill: But they are informed and believe it to be true, and so charge, that the said Roman, Hepburn, Stuart and Thorne, by said pretended agreement, have acquired and can acquire no right, title or interest to the land alleged to be in the possession of the defendants, or to the quicksilver minerals or mines thereon, because they say that the said San Vecinte tract is separate and distinct therefrom. Further, they are informed and believe that on the said 12th day of July, A. D. 1850, and at the time the said pretended agreement is alleged to have been made and delivered, some of the said children were infants and incapable of duly making and delivering such an agreement as is alleged in said Bill to have been made and delivered by them, and that the same would be and is inoperative tn law. Further, the defendants are informed and believe, and so charge the fact to be, that at the time when the said

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agreement is pretended to have been made, the said widow and children did not claim that the said Vicente tract embraced the lands alleged to be in possession of the defendants, called New Almaden, nor did they intend to set up any right to the latter; and since the commencement of the suit at law in said bill mentioned, the widow and some of the said children who have not been allured by the arts and devices of the said Roman, Hepburn, Stuart and Thorne, to engage with them in their conspirings to harass the defendants in the enjoyment of their just rights, have frequently declared that the said Roman, Hepburn, Stuart and Thorne, in attempting to use said pretended agreement as giving them any rights to the tract of land alleged to be in the possession of the defendants, called New Almaden, were, as the defendants now charge they are, practising a fraud; that the said Vecinte tract did not include the said New Almaden, and that in said pretended agreement they referred to minerals on the San Vicente tract, claimed by them to be separate and distinct from New Almaden.

4. And in answer to the allegations contained in the 4th section of said bill, the defendants say they are informed and believe it is not true, and therefore deny, that they wrongfully, unlawfully and forcibly, on the day of 1847, or at any other time, did enter upon and take possession of a large and valuable portion of said tract of land called San Vicente, viz.: all that portion thereof lying west of the *Arroyo de los Alamitos*, with a tract east of and along said *Arroyo* of half a mile in width to the Sierra on both sides of said *Arroyo*, or that they have ever entered upon and taken possession of any portion whatever of said Vicente tract. They admit that from the year 1847, and for a long time previous, they, or those whom they now represent and under whom they claim, have been in the possession of the tract of land called New Almaden, a plan of which is hereto attached, marked Exhibit A—the said tract being upon the said *Arroyo de los Alamitos* and adjacent to the said San Vicente, but distinct therefrom; but the possession of New Almaden, the defendants say, was acquired and has been maintained lawfully and peacably by them and those under whom they hold; that they were, have continued to be, and now are entitled to such possession of right, first by the denouncement of a quicksilver mine upon said tract, and subsequently by a grant of the said tract direct from the Supreme Government of Mexico, previous to the acquisition of California by the United States of America, and that it is against equity and good conscience that the heirs of the said José Reyes Rerreyesa, or those associated with them, should, under their said pretended title known to be incomplete and imperfect, and believed to be fraudulent and void, be allowed to interfere with the long and continued possession of the defendants under titles which they allege to be complete and absolute.

And the defendants further answer, that they are informed and be-

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lieve, and so aver the fact to be, that in the month of November, A. D. 1845, one Andres Castillero, a citizen of Mexico, at that time resident in California, in accordance with the laws of Mexico and the forms in such cases made and provided, denounced the quicksilver or cinnabar mines now called the New Almaden Mine, in the county of Santa Clara, and mentioned in said bill of complaint; and thereafter, viz: on the 30th day of December, of the same year, juridical possession of the same was given to him, by the proper judicial authority, in due form of law, with a tract of land three thousand varas in all directions, which tract of land corresponds, or nearly and substantially so, with that now claimed, possessed, and occupied by the defendants, and alleged by the complainants to be wrongfully possessed by the defendants; which tract of land the said Castillero, and the defendants as holding under him, have possessed and occupied uninterruptedly from the said 30th day of December, A. D. 1845, to the present time.

That a writing or agreement for a company for working the said mine was made out, and, together with the said denouncement, filed in due form in the Archives of the Alcalde of San José, on or about the 2d day of November, A. D. 1845.

That the said denouncement of the said mine, and the juridical possession given in December, A. D. 1845, were approved and confirmed by the "*Junta de Fomento y Administracion de Mineria*," the highest mining tribunal in the Government of Mexico, on the 5th day of May, A. D. 1846, and by the President of Mexico on the 9th day of the same month.

That by these proceedings of denouncement the said Castillero and his then associates acquired a title full, complete, and absolute, so long as they worked or caused the mine to be worked, to the minerals of the mine thus denounced, and within the mining possession as aforesaid, and a right to the use of the surface of the land and everything thereon, so far as it might be necessary to the working of the mine; and this without reference to the fee of the land, whether the same was still in the Mexican Government or in private individuals.

The defendants admit that the said Castillero, in his denouncement of the mine, ignorant of the boundaries of the ranchos in California, and indifferent whether the mine denounced was on public or private land, and simply for the purpose of fixing the identity of the mine by reference to some rancho in the vicinity, mentions the mine in some papers connected with the proceedings of the denouncement as on the land pertaining to the rancho of José Reyes Berreyesa; and in some others as on lands of the Mission of Santa Clara; but this was only for the purpose of description, and even, if not descriptive, and if true, would not affect the rights of the defendants in the premises, but were mistakes, as shown—so far as the rancho claimed by said Berreyesa is concerned—by the subsequent action of the Mexican

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Government, of said José Reyes Berreyesa and his heirs, and of said Castillero, his associates, and those holding under them.

And the defendants further answering, say, that on the 14th day of said May, the said tribunal of the Government of Mexico, recommended the President of Mexico to grant to the said Castillero, in fee, for the use of the said mine, the land surrounding it, and of which juridical possession had been given as aforesaid; and on the 20th day of May, 1845, the President of Mexico, in virtue of authority in him vested, granted to the said Castillero two square leagues on his mining possession.

That by virtue of the juridical possession given as aforesaid, in December, A. D. 1845, the said Castillero, and those holding under him, had and held, at the giving of the said grant in fee, the legal and actual possession of the two leagues of land so granted, or nearly all of it, and that no further act was required to make said grant full, perfect and absolute.

That nevertheless, in order the more particularly to mark out and define the boundaries of the said grant, and to avoid all questions of boundary with any of the claimants of the neighboring lands, the agents of said Castillero and those holding under him, procured the survey of the said lands and the marking of the boundaries, which survey and marking of boundaries were executed by the authorised Surveyor of that district, in the early part of the year 1848, and which survey was so made and the grant so located as to leave the said mine of New Almaden in the centre, or nearly so, of said grant so located, and to include little or no land on the side next the tract of San Vicente claimed by the Berreyesa widow and heirs, but on the contrary to leave out a large portion of land included in the said juridical possession on the side next the Berreyesa claim—this being done to avoid all dispute respecting boundaries; that during said survey and marking of boundaries, the widow of the said Berreyesa and his other heirs named in the bill, were present; that they pointed out the boundaries of the rancho claimed by them called San Vicente, and mentioned in this Bill; assisted in marking the boundaries of said New Almaden land; assented thereto, and agreed that they did not conflict with or interfere with the boundaries of the said San Vicente tract claimed by them.

That the tract of land then marked off, and to the marking off of which, being present, they agreed, amounted to two square leagues exactly, was, on the side adjoining the Berreyesa claim, within the juridical possession given in 1845 as aforesaid, and is precisely the tract of land now called "New Almaden," and claimed, possessed and actually occupied by the defendants, and which is alleged by the complainants in the said bill to be wrongfully in the possession of the defendants. That the said mine of New Almaden was never worked

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until denounced by the said Castillero, but from the time of said denouncement has been worked by him and those associated with him and holding under him, to the present time, he having from time to time associated other persons with him for the working of said mine, and transferred to others his right, title, interest and estate in and to the said land of New Almaden, so that the persons made defendants in this bill are now the owners and workers of said mine, and the owners in fee and occupants of said tract of land.

That the defendants have succeeded to all the rights of said Castillero; that the rights acquired under his denouncement have continued uninterrupted until the present time, and now are vested solely and wholly in the defendants. And that by the working of the mine from its denouncement as aforesaid, and by the succession of the defendants to all the rights of Castillero, they have acquired by the laws of Mexico a perfect title to the minerals of said mines and a perfect title to use the said land for said mining purposes, even should the fee be in others, which the defendants deny and aver to be in themselves by virtue of the aforesaid grant in fee, and especially to be in them as against the said pretended title under which the complainants profess to claim, and which, as the defendants are informed and believe and have already said, is only for one league, and never embraced the tract of New Almaden, and is incomplete, fraudulent and void.

The defendants further answering, admit that on this tract called New Almaden, they have erected buildings, lime-kilns, forges and furnaces; have opened extensive mines of cinnabar and extracted therefrom large quantities of quicksilver—the amount and value of which will be more particularly set forth hereinafter—and in the prosecution of their great undertaking of working the said quicksilver mine, have cut down trees—but not in large quantities—for fuel and other purposes, and opened lime quarries to obtain lime; but they deny that they have done these things wrongfully, or to the damage of complainants in the sum of one million dollars, or in any sum, or even without the implied consent of the said José Reyes Berreyesa up to the time of his death, and of his widow and heirs up to the commencement of the suit at law in the complainants' bill mentioned, and of the widow and some of the heirs to the present time. For the defendants aver that ever since the denouncement aforesaid, and during all the time the defendants, and those under whom they claim, have been in the possession and occupation of the land included in the said denouncement and grant, which is the land alleged in the complainant's bill to be the land wrongfully in the possession of the defendants, the widow and heirs of the said José Reyes Berreyesa, or most of them, have resided in the vicinity of the said mine and land of New Almaden, and daily seen the defendants, their agents and servants, at work in in the said mine and on the said land, without protest or objection, un-

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til the bringing of said suit at law; have seen and been fully cognizant of the immense expenditures of the defendants, amounting to nearly a million of dollars, in works and improvements on said mine and land; have witnessed the opening and working of the mine; the quarrying and burning of limestone; the cutting of wood for fuel; the erection of costly buildings, furnaces and smelting works, and the extraction and exportation of quicksilver; and all this for a term of nearly five years, without advancing a claim to the land, or once questioning the ownership or possession of the defendants. Moreover, during this time some of them have frequently been in the employ of the defendants, and labored for them on the very lands which the complainants now pretend are wrongfully in their possession and pretend to claim, and for this work they have been paid by the defendants. And in this acquiescence in the defendant's title and possession they have done no more than the said José Reyes Berreyesa, as the defendants aver, did up to the day of his death.

And the defendants attach hereto and make a part of this their answer, a copy (Exhibit B.) of an original paper in their possession, dated November 7, 1849, signed by the widow and children of said José Reyes Berreyesa, in which they say "the lands of the mine of New Almaden, the mine itself, and the site of its works, which do not belong to us by any title."

And to show still further the conduct of said widow and children in the premises, the defendants, further answering, aver, that in a purchase for a valuable consideration made by them of the interest of said widow and children to certain land adjacent to said tract of New Almaden, by a conveyance in writing, it is expressed therein that the land is bordering on the land belonging to New Almaden; the same lands which the complainants now allege do not belong to New Almaden; and in the same conveyance, the right, title and interest of said widow and children, if any they have, to the lands of New Almaden, now alleged to be wrongfully in the possession of the defendants, is, as the defendants believe, to them conveyed; and this the defendants contend and aver had been previously done by virtue of a certain conveyance of said widow and children to one Theodore Shillaber, who had transferred the same to the defendants; all of which took place before the making of the pretended agreement of said Roman, Hepburn, Stuart and Thorne.

And the defendants further answering say, in answer to the allegations contained in the 4th and 6th articles of the complainants' bill of complaint, as to the cutting down and destroying timber and quarrying and removing large qnantities of lime, that they have never taken sold or removed from the said tract of land, which they say to them belongs, any wood, timber, limestone or lime; and the timber and wood which they have cut, and all the limestone which they have

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[illegible]

6. The defendants further answering [illegible] [illegible] ... and that they and those under whom they hold [illegible] have [illegible] the said land [illegible] term of years [illegible] but they deny each and every allegation [illegible] they have committed trespass [illegible] the earth and in taking therefrom [illegible] sufficient in amount to produce at least two [illegible] silver daily, or any other quantity, or [illegible] any [illegible] upon any land of the complainants or either of them.

7. As to the matters set forth in Article 7 of complainants' bill of complaint, the defendants deny that they have caused any delay in the progress of said action of ejectment for damages, for the purposes alleged in said 7th Article, or for any other purposes, and they aver and charge the truth to be, that if there has been any unnecessary delay in the progress of said action, such delay has been caused by the complainants alone. And they refer to the record of the suit now pending in this Court. And further, they deny that they are secretly carrying away quicksilver beyond the jurisdiction of this Court, and

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aver that all quicksilver conveyed away is so conveyed openly and publicly, in the regular course of their business. They admit that they ship away a large portion of the quicksilver obtained from the mine, but only for want of sufficient market for the same in California, and because the works and improvements of the mine and lands of New Almaden, requiring now, as they have always done, so large and constant an outlay of capital, make such shipments and sales abroad absolutely necessary.

8. As to the matters set forth in Article 8 of complainants' bill of complaint, the defendants, further answering, deny that the proceeds of the sales of said quicksilver amount to about the sum of $1,000 per day, and that they are fraudulently retaining said proceeds beyond the jurisdiction of this Court or concealing the same. Further, they deny that they have not visible property within the reach of the process of this Court, or subject thereto, sufficient to satisfy and discharge the damages which the complainants would be justly entitled to recover in their said action at law, if, in the judgment of this court, they should be entitled to recover at all; or that, unless they are restrained, by the interposition of this Court, from the commission of what the complainants style trespasses, and from removing, selling, or otherwise disposing of the products of said mines now within the jurisdiction of this Court, they, the complainants, will sustain great and irreparable injury in the premises, or any injury at all.

The defendants aver and charge the truth to be, that they have, within reach of the process of this Court and subject thereto, property visible, well known, large and valuable, immensely more than sufficient to satisfy any damage which the complainants may sustain by reason of anything in their bill contained; that those of the defendants who do not reside in California are constantly remitting to their agents here, for the purpose of carrying on the works and improvements of the land and mine of New Almaden, much more than their proportion of the amount received from the sales of the quicksilver—the sole product of the mine here and elsewhere; that the value of the said New Almaden mine and land has been, and is, and will be for a long time to come, enhanced, day by day, by the labor and capital and enterprise of the defendants, who, in full faith that they are the true and lawful owners thereof, by just and legal title, obtained in good faith and in due form of law, have undertaken and carried on, under great discouragements and at a vast outlay, their works of permanent utility, with no expectation of immediate reimbursement. And now if the complainants seek to test in a court of law the title of defendants, they pray that meanwhile their works may not be suspended, the value of the mine depreciated, and themselves ruined by an injunction upon their operations.

9. As to the matters set forth in Article 9 of complainants' bill of

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complaint, the defendants deny that they have in their possession or under their control, within the counties of Santa Clara and San Francisco, 500,000 pounds of quicksilver, the produce of the said New Almaden mine, or anything like that amount; but the amount which they actually have on hand in the said counties as well as the sales of the quicksilver produced by the said mine will be more particularly hereinafter set forth.

10. And the defendants further answering, say that the entire proceeds of said mining operations since the first denouncement and working of said mine in 1845, to the first day of the present month of May, have amounted to the sum of $492,945 78, received from the sales of quicksilver, the sole product of said mine and lands of New Almaden, viz, that the defendants and their agents have received from sales of quicksilver in California, consumed or to be consumed in this country, the sum of $30,323 20; from sales in California of quicksilver shipped to foreign countries, the sum of $33,729 37; from sales of quicksilver in foreign countries the sum of $428,893 19—making in all as the receipts of the sales of the produce of said mine and lands of New Almaden, since the said month of November, 1845, the sum of $492,945 78, and no more; and that the sales of the produce of the said mine and lands, which have been made and are unpaid for, being now due, amount to just $43,594 50, and no more; thus making the entire amount of sales of the produce of the said mine and lands, received and expected to be received, $535,540 28, and no more.

That since the said month of November, A. D. 1845, the defendants and those under whom they hold, have expended a large sum of money in the working of said mine and improvements on the said land of New Almaden, in the construction of furnaces, roads, buildings, machinery, etc., viz., the sum of $978,114 11; that from the said time up to the present, they have received and sold quicksilver as the produce of said mine and land to the amount of $535,540 28, and no more, and even of that sum there is now due and unreceived, $42,594 50, making the amount of money expended on said mine and lands in labor and permanent improvements over and above the amount received therefrom equal to $485,168 33 over and above the entire amount of sales of the produce of said mine and lands, including all monies due and unpaid and to become due, equal to $442,574 83: That, moreover, in the above amount of expenses no allowance is made for interest on the capital expended on said improvements several years ago, and which capital is still unreturned and unpaid, nor for the the time and labor which the defendants have personally given and devoted to the works and improvements on the said mine and lands.

That the defendants are now engaged in erecting large buildings of

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brick and stone, in constructing a road and opening a tunnel or *adit* into said mine, which works they expect to complete within the next few months at a cost of not less than from $60,000 to $80,000.

11. And the defendents further answering say, that the average sale of the proceeds of said mine and land have been from the month of November, A. D. 1845, to the first of the present month of May, of the value of $227 88-100 per day, and no more; and that the average expenditure in improvements and works in said mine and land during the same period, have been of the value of $416 21-100 per day; and that the entire proceeds of said mine and land, during the same period, including all the quicksilver sold and unpaid for, and all on hand and unsold, allowing a fair estimate for the prices likely to be received for the quicksilver to be sold, and deducting the probable losses and expenses in making such sales, will be of the average value of $319 74-100 per day, and no more; while the average daily expenses for the works, buildings, etc., erected and constructed, and for materials purchased and used, for labor employed in producing the quicksilver and transporting it to market, of the value of $416 21-100 per day; thus leaving the defendants losers of a considerable sum of money each day, which sum amounts in all at the present time to not less than $226,713 10; a sum of money which they can only expect to receive back after a long term of years, when labor shall become less expensive in California, when the consumption of quicksilver shall increase in this country, and when the necessary works and improvements on the mine and land shall be completed.

And the defendants say that they have in their possession and under their control in the city of San Francisco, 55,275 pounds of quicksilver, and no more, which, after paying the cost of flasks, storage and commissions of sale, will not yield the nett sum of more than $20,000; that the amount in their possession and under their control in the county of Santa Clara is not of greater value than $25,000, and if immediately brought into market, would not, in all probability, yield anything like that sum.

12. The defendants, in their answer foregoing, having answered all and singular the allegations and interrogatories of the complainants' bill, submit to the Court with what equity, the premises considered, the complainants ask for the production of the title papers and documents of the defendants, especially before the production and filing of any on the part of the complainants.

And they further submit, that all the pretensions of the complainants set up to the lands and mines in the possession of the defendants, are against equity and good conscience, and even scandalous and impertinent; that the said Roman, Stuart, Hepburn and Thorne have obtained the said pretended agreement from the said widow and children, and instituted the said suit at law, and filed this their bill in

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equity, and circulated stories prejudicial to the defendants' title, and in various ways attempted to interfere with their operations, hoping that the defendants, most of whom reside in a foreign country, rather than endure these things, will purchase a peace, and thereby enrich the said Roman, Stuart, Hepburn and Thorne.

And these defendants deny all and all manner of unlawful combination and confederacy, wherewith they, by the said bill, are charged, without this, that there is any other matter, cause or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be here dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

By their Attorneys,
HALLECK, PEACHY & BILLINGS.

DISTRICT COURT OF THE UNITED STATES,
Northern District of California.

Before Henry B. Janes, a Commissioner of said Court, in the City of San Francisco, I, John Parrott, one of the defendants named in the foregoing answer, being duly sworn depose and say that the matters and things set forth in the foregoing answer, as of the knowledge of the defendants are true, and those stated upon their information and belief, I believe to be true.

JOHN PARROTT.

Sworn to this 4th day of May, A. D. 1852, before me,
HENRY B. JANES,
U. S. Commissioner.

Here follows "A,"—(Map.)

B.

Know all men by these Presents: That the undersigned, Dona Zacarias Bernal, José Ygnacio Berreyesa, Carmen Berreyesa, Loreto

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Berreyesa, Nemisio Berreyesa, Encarnacion Berreyesa, Fernando Berreyesa, Magdalena Berreyesa, for themselves, and José Ygnacio in the name of his brothers, José de los Santas Berreyesa, Francisco Berreyesa and Santiago Berreyesa, do give ample, full and sufficient power to James M. Jones, attorney, and resident in the town of San José, to the end that he, as our attorney *adlitem*, may institute a suit in our name, in the proper court of law, against a certain Shillaber and others, in order to annul a fraudulent sale of lands of the Rancho of San Vicente, belonging to us, in which pretended sale the said Shillabar and his agents have caused persons not thereto authorized to sign a doed of sale declaring that we have sold not only the said portion of the Rancho of San Vicente, but likewise the lands of the mine of New Almaden, the mine itself and the site of its works, which do not belong to us by any title.

And in consideration of the heavy responsibility which the said Shillaber and his agents have endeavored to fix upon us, and the serious injuries which fall upon us in this fraudulent sale, we declare that it is null, false and illegal in all its clauses, for the reasons already set forth, and for others: And in virtue whereof we give this power of attorney for the purposes above mentioned, and we ratify and confirm all the legal acts of our said attorney; signing these presents at Santa Clara on the 7th day of November, 1849.

CARMEN BERREYESA, x
ENCARNACION BERREYESA, x
LORETO BERREYESA, x

ZACARIAS BERNAL, x
MAGDALINA BERREYESA, x
FERNANDO BERREYESA, x
SANTIAGO BERREYESA

For my brothers, JOSÈ SANTIAGO and FRANCISCO JOSE SANTOS BERREYESA, FRANCISCO BERREYESA, YGNACIO BERREYESA, NEMESIO BERREYESA.

Witness: ROBERT BIRNIE,
Witness: MACSIMO Z. FERNANDO,
JOSE S. BERREYESA,

I, Geo. Penn Johnson, Clerk of the Circuit Court of the United States for the Districts of California, do hereby certify the foregoing to be a true copy of the original answer in above cause on file in my office. Witness my hand and seal of said Court, this 21 August, 1857.

{ SEAL, } Attest,

GEO. PEN JOHSTON,
CUTLER MCALLISTER,
D. C.

Filed, Aug. 21, 1857.

W. H. CHEVERS,
Dep. Clerk.

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["O. H. No. 50."]

CERTIFIED TRANSCRIPT FROM THIRD JUDICIAL DISTRICT COURT.

MARIA Y. BERNAL DE BERREYESA, ET ALS.
vs.
JAMES ALEXANDER FORBES, AND ROBERT WALKINSHAW.

Proceedings had in the District Court of the Third Judicirl District of the State of California in and for the countp of Santa Clara. Before the Hon. J. R. Watson, Judge of said Court.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA.
DISTRICT COURT, AUGUST TERM, A. D. 1850.

To the Hon. J. H. Watson, Judge of the Third Judicial District, for the County of Santa Clara State aforesaid.

The complaint of Maria Y. Bernal de Berreyesa, wife of José Reyes Berreyesa, of I. Ignacio, Santiago, José de los Santos, Nemesio, Francisco and Fernando Berreyesa: and of Maria del Carmen Berreyesa and her husband, Lorenzo Pinedo, of Loreto Berreyesa and her husband Juan Bojorguez and of Magdalena Berreyesa and her husband Maximo Fernandez, and of Encarnacion Berreyesa, by his guardian, William R. Bassham, all residents of said county and State, and heirs of their father José R. Berreyesa, deceased, respectfully shows:

That your complainants are in actual possession as owners of a certain tract of land in said county of Santa Clara, known as the Cañada de los Capitancillos, or Rancho de San Vincente, and bounded and described as follows, viz. on the north by the low hills near the lands of the Pueblo de San José, on the south by the Sierra Azul, on the east by the Laurel Hills, and on the west by the Rancho de los Capitancillos, or of Justo Larios, which boundary commences at the junction of the Alamitos and dry creeks, and runs thence southwardly, passing the hills or lomita in the centre of the valley towards the east, to the Sierra: That said tract was granted with said boundaries to the said José R. Berreyesa, by Governor J. B. Alvarado, on the 20th day of August, A. D. 1842, was immediately taken possession of by the said Berreyesa, who remained in quiet possession as owner until his death, when your complainants, his heirs, took and

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have ever since retained actual, peaceable, public and uninterrupted possession thereof as owners. And now your complainants aver that James A. Forbes and Robert Walkinshaw, also of the said county and State, with divers other persons unknown to complainants, on or about the 15th day of August, 1845, and at divers other times between the said date and the day of filing this complaint, went with force and arms, and trespassed upon the said land, by cutting and carrying away the wood, timber and limestone of your complainants, without their knowledge or consent, whereby they have been damaged to the amount of the said wood, timber, and limestone, to wit, in the full sum of twenty thousand dollars; for which sum your complainants pray judgment against the said Forbes and Walkinshaw jointly and severally, who they also pray may be summoned to appear and answer this complaint and that they be enjoined and prohibited from farther trespassing within said boundaries.

JONES, HESTER & VOORHIES,
For Compl'nts.

Filed August 26, A. D. 1850.

H. C. MELONE, Clerk,
O. H. ALLEN, D. C.

DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA.

The People of the State of California: To James A. Forbes and Robert Walkinshaw. You are hereby summoned to appear in the District Court of the Third Judicial District, held in the city of San José and county of Santa Clara, to answer unto the complaint of Maria Y. Bernal Berreyesa and others filed in this Court, within ten days after service of this writ.

SEAL

Witness the Hon. John H. Watson, Judge of the Third Judicial District, under my private seal, there being no official seal yet provided at office, this 26th day of August, A. D. 1850.

H. C. MELONE, Clerk,
O. H. ALLEN, D. C.

Came into my hands this 27th day of August, 1850.

JOHN YONTZ,
Sheriff.

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Served by leaving a copy of this summons, also a copy of the complaint, with Jas. A. Forbes and Robert Walkinshaw, personally.
August 28th, 1850.

JOHN YONTZ,
Sheriff.

S. fees, service, $6 00
Mileage . . 7 50
$13 50

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA. } ss.

DISTRICT COURT OF THIRD JUDICIAL DISTRICT.

MARIA Y. BERNAL BERREYESA,
Wife of José Reyes Berreyesa,
AND OTHERS.
v.
JAMES A. FORBES
AND
ROBERT WALKINSHAW.

The defendants appear in Court and demur to the complaint of the complainants, and for cause of demurrer set forth:

1. That the boundaries and description of the land upon which the complainants allege a trespass to have been committed by the defendants, are, as stated in said complaint, so uncertain and indefinite as to render it impossible for the defendants to identify the same and to answer said complaints.

2. That the said complaint is otherwise informal, insufficient and defective.

The defendants therefore pray this Hon. Court whether they are bound in law to answer said complaint.

W. B. ALMOND, PEACHEY & BILLINGS,
Attorneys for Defendants.

Filed Sept. 5, 1850.

H. C. MELONE,
Clerk.

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BERREYESA ET AL.
vs.
J. A. FORBES, ET AL.
} Ejectment.

The Plaintiffs in this case move the Court for an order of survey, and the County Surveyor of Santa Clara county be appointed to run the lines of the tract of land granted by the Mexican Government to the ancestor of the plaintiffs, and that he make a true survey of the same and return a certified plot thereof to this Court at the earliest practicable moment.

Ordered accordingly, Sept. 6, 1850, and that defendants counsel be notified that the Surveyor will proceed to the premises on Monday the 9th of Sept. inst.

JOHN H. WATSON,
Judge 3d Judicial Dist. Cal.

Filed, Sept. 6, 1850.

H. C. MELONE,
Clerk.

IN THE DISTRICT COURT OF SANTA CLARA COUNTY.

MARIA Y. BERNAL BERREYESA,
AND OTHERS.
vs.
JAMES A. FORBES, AND
ROBERT WALKINSHAW.

The Defendants move the Court to order the Plaintiffs herein to furnish said defendants or their attorney, with a copy of the title, grant, or patent, under which, by an order of this Court, it is proposed to have a survey made by the County Surveyor, at least one day before said survey shall be commenced.

ALMOND, PEACHY & BILLINGS,
Attorneys for Defts.

Filed, Sept. 6, 1850.

H. C. MELONE, Clerk.

IN THE THIRD JUDICIAL DISTRICT, SANTA CLARA CO.

MARIA Y. BERNAL BERREYESA,
AND OTHERS.
vs.
JAMES ALEX. FORBES, AND
ROBERT WALKINSHAW.

In this case the Defendants move the Court to set aside the order of Survey made herein for the following reasons.

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1. That said order was made without any notice to, and in the absence of defendants or either of them, or of their attorney.

2. Said order does not set out the grant, or title, or patent, of the Mexican Government, or even describe the same, so as to apprise defendants of the limits intended for survey.

ALMOND, PEACHY & BILLINGS,
Attorneys for Defts.

Filed Sept. 6, 1850.

H. C. MELONE.

Set aside.

IN THE DISTRICT COURT OF SANTA CLARA COUNTY.

MARIA BERNAL DE BERREYESA,
Wife of José Reyes Berreyesa,
ET AL.
vs.
JAMES A. FORBES
AND
ROBERT WALKINSHAW.

And the said defendants come and for answer say that they are not guilty of the said supposed trespass, as charged against them in the complaint of the said complainants, or of any or either of them; and the said defendants therefore deny all the allegations and charges made by the said complainants in their said complaint against them the said defendants, and of this the said defendants put themselves upon the county, &c.

PEACHY, HALLECK & ALMOND,
Attorneys for Deft's.

And for a further answer to the said complaint, the said defendants say that the said plaintiffs ought not further to have or maintain their aforesaid action thereof against them, because they say that the said close in the said complaint mentioned, and in which the said supposed trespasses are charged to have been committed by the said defendants, now is and at the said several times when said supposed trespasses are charged to have been committed, was the close, soil and freehold of the said defendants Robert Walkinshaw, to wit, at the county of Santa Clara aforesaid. Wherefore the said Robert Walkinshaw in his own right, and the said James A. Forbes as his servant, and by his command, and with his permission, at the said several times, when, &c., committed, if any trespasses at all were committed, the said several supposed trespasses in the said complaint mentioned,

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in the said close, in which, &c., so being the close, soil and freehold, of the said Robert Walkinshaw, as they lawfully might for the cause aforesaid, which on the said several supposed trespasses if any, whereof the said complainants have complained against them. And this they are ready to verify, &c.

HALLECK, PEACHY & ALMOND,
Attorneys for Defts.

Filed, Sept. 19, 1850.

H. C. MELONE,
Clerk.

MARIA Y. BERNAL DE BERREYESA,
Wife of José Reyes Berreyesa,
OF IGNACIO, AND OTHERS.
vs.
JAMES A. FORBES,
AND
ROBERT WALKINSHAW.
} In Trespass.

And now come the plaintiffs by their counsel, and move the Court for a survey by the County Surveyor of this county, of the boundaries of the tract of land described in the plaintiffs' declaration in this suit, the said tract of land containing the following boundary, to wit, on the north by the low hills near the lands of the Pueblo de San José, on the south by the Sierra Azul, on the east by the Laurel Hills, and on the west by the Rancho de los Capitancillos, or of Justo Larios, and which boundary commences at the junction of the Alamitos and dry creeks, and runs thence southwardly, passing the hills or Cornets in the center of the valley towards the east to the Sierra, and being the same land granted to said José R. Berreyesa by Governor J. B. Alvarado, on the 20th day of August, 1842, and that the said Surveyor proceed upon the premises on next Monday morning, for the purpose of making said survey, and report his survey together with a plot of the ground to this Court as soon as the same shall be completed, for the purpose of evidence for the plaintiffs in the above entitled cause upon the trial thereof in this court.

JONES, VOORHIES & HESTER,
For Plaintiffs.

Sept. 7, 1850.
Filed Sept. 7, 1850.

H. C. MELONE,
Clerk.

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IN THE DISTRICT COURT FOR THE COUNTY OF SANTA CLARA.

STATE OF CALIFORNIA,

BERREYESA ET AL.
vs.
FORBES & WALKINSHAW.
} AUGUST TERM, 1850.

The Defendants and their attorneys, Allman & Halleck, in this cause, will take notice that the trial of this cause, upon an issue of law will be had by the Court in the Court House of said County, at 3 o'clock on the 16th day of Sept. 1850.

JONES, VOORHIES & HESTER,
For Plaintiffs.

Filed Sept. 16, 1850.

H. C. MELONE,
Clerk.

MARIA Y. BERNAL DE BERREYESA,
Wife of José Reyes Berreyesa,
ET AL.
vs.
JAMES A. FORBES
AND
ROBERT WALKINSHAW.

The plaintiffs by their counsel now move the Court for a rule requiring the defendants on next Monday the 16th inst., to produce in Court, and file amongst the papers in the above entitled cause, for the inspection of the counsel of the plaintiffs, certain papers of a pretended denouncement, made in 1845 or thereabouts, of the Almaden mines, upon the land in the plaintiffs complaint herein mentioned, pretended to be made by one Castearas, a military officer. Also certain papers of a pretended denouncement of said mines made by said Forbes, or made by said Forbes and others, in 1848, or thereabouts; also all the pretended papers of a confirmation of either or both of said denouncements, pretended to be made by the Mexican Government; also all the papers of a pretended grant made by the Mexican Government to him the said Forbes, or to him and others, of two leagues of land more or less, upon which said mines are situated, together with all other paper or papers, connected with the title to said Almaden mines, or the land upon which the same is situated, upon

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which the said defendants intend to found their claim to said land, or to said mines, or their right to commit the trespasses in said complaint mentioned, as a defense in said suit; the inspection of the same by the counsel for said plaintiffs being necessary to enable them to prosecute the suit. And which motion is granted by the Court, and the said papers or copies thereof are ordered to be produced according to said motion.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA.

James M. Jones, the attorney for the plaintiffs in the suit within mentioned, states on oath, that he believes that facts mentioned in the within rule are true, and that the exhibition of of said papers in Court, if any such exist, as required by the within mentioned rule, are necessary to the prosecution of said suit for the said plaintiffs.

J. M. JONES.

Sworn and subscribed before me this 13th day of September, A. D. 1850.

H. C. MELONE,
Clerk.

Rule granted.

JNO. H. WATSON,
Judge.

Filed, Sept. 13, 1850.

H. C. MELONE,

DISTRICT COURT OF THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA. } ss.

JAMES A. FORBES,
ROBERT WALKINSHAW,
ADS.

And the said defendants for a further answer in this behalf say as to so much of the said supposed trespasses, in the said complaint mentioned, as are therein alleged to have been committed by the defendants at a time anterior to one year next preceeding the passage of the act entitled "An Act defining the time for commencing civil actions," that the complainants ought not to have or maintain their aforesaid action thereof against them the defendants, because they say that by the laws of California before the passage of the said act,

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all suits for trespass were barred by the expiration of one year from the day on which the trespass was committed, unless suit was instituted therefor within said year. And this the defendants are ready to verify, wherefore they pray judgment, &c.

HALLECK, PEACHY & BILLINGS,
For Defendants.

Filed Sept. 19, 1850.

H. C. MELONE,
Clerk.

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

M. Z. BERREYESA, ET ALS.
vs.
ISIDORO DE LA TORRE, ET ALS.

TO THE HON. JOHN H. WATSON,
Judge of the Third Judicial District Court.

The complaint of Maria Zac de Bernal Berreyesa, widow of José Reyes Berreyesa, of Maria del Carmen Berreyesa and her husband Lorenzo Pinedo, of Loresa Berreyesa and her husband, Juan Bojorques, of Santiago, José de los Santos Berreyesa, Nemesio Berreyesa, Francisco Berreyesa, of Magdalena Berreyesa and her husband Maximo Fernandez, and of William R. Bassham, tutor of José Encarn Berreyesa, all children and heirs of said J. R. Berreyesa, and of Richard Roman, James Hepburn and Charles V. Stuart, all which complainants reside in said county of Santa Clara;
Respectfully shows:

That your complainants, the widow and heirs of said J. R. Berreyesa, are the lawful owners and possessors of a certain tract of land situate in said county of Santa Clara, known as the Rancho de la Cañada de los Capitancillos, *alias* Ranch of San Vicente, and bounded on the north by the low hills near the lands of the Pueblo of San José, on the south by the Sierra, on the east by the Laurel hills, *alias* lomeria, and on the west by the Rancho of William Wiggins, formerly of Justo Larios, which western line commences at the angle formed by the junction of the arroyo seco, or dry creek, and Alamitos creek, and runs thence south by the eastern brow or slope of the hills in the center of the valley to the Sierra. That the whole of said tract within said boundaries was granted to José Reyes Berreyesa, on August 20th, 1842, by Governor Juan B. Alvarado, which grant

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was duly recorded, and the said J. R. Berreyesa was then and during five years previous, and has ever since remained in actual, peaceable, public and uninterrupted possession, in good faith as owner of said tract. That the said J. R. Berreyesa, died in said county in the year 1847, leaving his children as heirs, and his widow retaining half the tract as her share of the community, the same having been acquired during marriage. That said R. Roman, Jas Hepburn, and C. V. Stuart, are the lessees from said widow, and heirs of all the minerals and mines, hacienda, &c., on said tract of land.

And now your complainants aver that one Isidoro de la Torre, of Mazatlan, in Mexico, Alexander Forbes and William Barron, and Eustacho Barron, of Tepic in Mexico, John Parrot of San Francisco, and James A. Forbes and Robert Walkinshaw, of Santa Ciara county, State of California, defendants, are in the unlawful possession, and have been since February 1st, 1845, of a large and valuable portion of said tract of land, and refuse to deliver the same to your complainants, though duly requested so to do. That the said persons have taken since the said 1st of February, 1845, and still retain, unlawful possession of all that portion of said tract lying west of the Arroyo de los Alamillos, *alias* Alamitos, with a tract east of and along said Arroyo de los Alamitos, of half a mile in width, running to the Sierra on both sides of said Arroyo. That the said defendants without the consent of your complainants, have erected a hacienda of buildings, furnaces, forges, and appurtenances, on the banks of said Arroyo, in the middle of said complainants tract, and have trespassed upon said land, by opening thereon and working quicksilver, lime, and other mines, and more particularly the mine of New Almaden, on the western portion of said Rancho. That the portion of said Rancho thus unlawfully taken possession of by defendants, is worth one million dollars, and your complainants have been damaged by the trespasses and wrongs of defendants, in the full sum of one million dollars. That the rents and profits accruing from the said mine of New Almaden and appurtenances, of which your complainants have been unjustly deprived, and which have been enjoyed by the defendants since Feb. 1st, 1845, amount to seven hundred thousand dollars, and that the use of the hacienda and appurtenances, with the wood, water, lime, land and other property and privileges of these complainants during that time, is well worth three hundred thousand dollars.

Wherefore your complainants pray that the said defendants may be duly cited, and ordered, and adjudged to deliver forthwith to your complainants, the possession of all the aforesaid portions of the said tract, by them unjustly witheld as aforesaid; that any pretended claim said defendants may set up thereto be annulled, and that said defendants be jointly and severally condemned to pay to your complainants the said sum of one million dollars, as rents, profits, and damages for

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the unlawful detention of said premises, and for such other relief as the nature of the case may demand &c.

WELLER & JONES,
Att'ys for Complainants.

Personally came Richard Roman, one of the above complainants, who being duly sworn deposes and says that Isidoro de la Torre, Alexander Forbes, William Barron and Eustachio Barron are non-residents of, and deponent believes are not now in the State of California, and that the said non-residents are parties interested necessary and proper to said suit, and a cause of action exists against said non-residents in favor of complainants.

RICH. ROMAN.

Sworn to and subscribed at San Jose, this 30th day of September, 1850, before me,

H. C. MELONE,
Clerk.

It is ordered in this case that notice be given to the non-resident defendants by publication in the "Pacific News," a newspaper published in the City of San Francisco, at least once a month for six months in succession and that a copy of the summons and complaint (if their residence is known) be forthwith deposited in the Post office and sent to them.

Oct. 2, 1850.

JOHN H. WATSON,
Judge 3d Judicial Dist. Cala.

Filed October 5, 1850.

H. C. MELONE,
Clerk.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. }

The people of the State of California, To Isidoro de la Torre, Alexander Forbes, William Barron, Eustachio Barron, John Parrot, James A. Forbes and Robert Walkinshaw. You are hereby summoned to appear and answer unto the complaint of M. Z. Berreyesa et als. filed in this Court, within ten days after service of this writ.

Witness, Hon JNO. H. WATSON,
Judge of the third Judicial District with with my private seal there being no official seal yet provided at office this 11th day of October, A. D. 1850.

{ SEAL }

Test. H. C. MELONE,
Clerk.

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Served by leaving a copy of the complaint with Robert Walkinshaw & Jas. A. Forbes, personally.

JOHN YONTZ,
Sheriff.

Oct. 21, 1850.
S. fees . . $6 00
Mileage . . 7 50

$13 50

DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR THE STATE AND COUNTY AFORESAID.

STATE OF CALIFORNIA, } ss
COUNTY OF SAN FRANCISCO. }

M. Z. BERREYESA
ET ALS.
vs.
ISIDORO DE LA TORRE
ET ALS.

James A. Forbes and Robert Walkinshaw, appear and demur to the said complaint and for the causes of demurrer set forth.

I. That this Court has no Jurisdiction of the subject matter of this action, so far as it involves the question of title to the minerals being on, under or within the lands specified in said complaint.

II. That this Court has no jurisdiction of the subject matter of this action so far as it relates to the question of title to the lands specified in said complaint.

III. The Defendants do further take objection by the following answer to matters which are causes of demurrer not appearing on the said complaint. That is to say, they show and aver that the proprietors of the land in the complaint mentioned as that which the complaint alleges to be wrongfully witheld from complainants are Alexander Forbes, Eustace Barron, Wiiliam Forbes, Eustace W. Barron, all of Tepic, in the Republic of Mexico, Isodoro de la Torre of Mazatlan, J. B. Jecker of the City of Mexico, James A. Forbes and Robert Walkinshaw of Santa Clara County, in this State, John Parrot of San Francisco City in this State, Martin La Piedra and Francisco Maria Ortez, both of the City of Mexico, and that the Lessees of the said land who now hold occupy and enjoy the same under a written contract of lease for a term of years to expire on the

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twenty-eighth day of November A. D. one thousand eight hundred and sixty-two, are Alexander Forbes, Eustace Barron, William Forbes and Eustaee W. Barron of said City of Tepic, Isidoro de la Torre of Mazatlan, J. B. Jecker of Mexico, William Gibbs & Co. of Lima in Peru, and Theodore Shillaber of the City of San Francisco in this State. The said Defendants further show that the said Alexander Forbes Eustace Barron, William Forbes, Eustace W. Barron, Isidoro de la Torre, J. B. Jecker, James A. Forbes, Robert Walkinshaw, Martin la Piedra, Francisco Maria Ortez and William Gibbs are foreigners (the other partners in the firm of William Gibbs & Co. being unknown to the said Defendants) and not citizens of the United States, or of any State or Territory or possession thereof and that their right and title to the said land and the minerals therein contained was derived by grant and denouncement from the Supreme Government of Mexico, and in accordance with Mexican law prior to the late declaration of War by the United States against the Republic of Mexico. The said defendants therefore take the following objection to this action:

1. That this Court has no jurisdiction of the subject of this action.
2. That there is a defect of parties defendant.
3. That the complaint does not state facts sufficient to constitute a cause of action.
4. That the complaint is in other respects informal insufficient and defective.

The Defendants therefore pray judgment whether they are bound to answer said complaint further than they have already answered it.

HALLECK, PEACHY & BILLINGS,
& WM. B. ALMOND,
Defts. Attys.

Filed Oct. 21st, 1850.

H. C. MELONE,
Clerk.

DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA, } sct.
COUNTY OF SANTA CLARA. }

The People of the State of California. To Isidore De la Torre, Alexander Forbes, William Barron, Eustachio Barron, John Parrot James A. Forbes and Robert Walkinshaw, Greeting—You are hereby

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summoned to appear and answer the complaint of M. Z. Berreyesa et als filed in this Court, on the fourth Monday in April A. D. 1851.

Witness Hon. JOHN H. WATSON,

{ L S } Judge of the third Judicial District Court with my private Seal, there being no Official Seal yet provided at office this 21st day of October, A. D. 1850.

H. C. MELONE,
Clerk.

Red Nov. 7, 1850.

Returned served personally on Defendant Parrott in the City of San Francisco on the 7th day of November 1850, by delivering him a copy of this summons and a copy of complaint.

J. C. HAYS,
Sheriff County of San Francisco.

Nov. 7, 1850. J. A. FREANOR,
Dept.

Shffs fee $4 00

DISTRICT COURT OF THIRD JUDICIAL DISTRICT, IN THE STATE AND COUNTY AFORESAID.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA.

JAMES A. FORBES,
ROBERT WALKINSHAM
ADS.
MARIA BERNAL DE BERREYESA
ET ALS.

The Defendants in this cause in answer to the order of Court made on the 13th day of September A. D. 1850, requiring the Defendants to produce in Court certain papers upon which they intend to rely as a defence in this cause answer and say:

That they have exercised all due diligence to procure and produce the said papers in Court, by writing immediately on the receipt of the above mentioned order, to the parties in Mexico, who hold them, but to this date the Defendants have not received them, this delay having been caused, as Defendants verily believe by the failure of the Mail Steamers running from Panama to San Francisco, to touch, as heretofore has been their custom at the Port of San Blas in Mexico, from which place the Defendants have expected, and still expect, to receive said papers.

The Defendants therefore ask of your honorable Court such further

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time as may be necessary to procure said papers and comply with the said order of Court.

And the Defendants further aver that the said papers and other documents which they have sent for in Mexico, and which they are daily expecting to receive, are absolutely necessary to them in the above entitled cause and that they cannot proceed with the trial of this cause without said papers and documents.

And the Defendants specify among others, the following papers and documents as absolutely necessary to them before they can proceed with the trial of this cause, viz.: (1) The original Denouncement of the Mine of New Almaden and the Judicial possession given of the same in the year 1845. (2.) The confirmation of said Denouncement and possession by the Supreme Government of Mexico in the year 1846, and prior to the late declaration of War by the United States against the Republic of Mexico. (3.) The original grant of land including said mining possession, made by the Supreme government of Mexico (prior to the Declaration of War as aforesaid) to the owners of said mine. (4.) The original documents showing the ownership of said mine and land in the parties from whom the Defendants derive title: the Defendants verily believing that the land referred to in said documents is the same land as that upon which the pretended trespass is alleged in Plaintiffs complaint to have been committed, and that these documents are absolutely necessary for their defence.

The Defendants therefore pray a continuance of the above entitled cause to the April term of this Honorable Court.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA, }

Henry W. Halleck, one of the attorneys in the above entitled suit states on oath that he believes the facts mentioned in the foregoing answer and petition are true, that all due dilligence has been exercised to produce in Court the aforementioned papers, that further time is necessary to Defendants in order to enable them to produce said papers, and that Defendants cannot go to trial in this cause till said papers are procured.

H. W. HALLECK.

Sworn to and subscribed before me.

JOHN H. WATSON,
Judge.

Filed Decr. 23, 1850.

H. C. MELONE,
Clerk.

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MARIA ZAC DE BERNAL BERREYESA,
Widow of José Reyes Berreyesa,
ET AL.
vs.
ISIDORE DE LA TORRE,
ET AL.

The defts are notified that the Plaintiffs will at 3 o'clock on thursday 23d day of Jany 1851 at the Court House of the County of Santa Clara, State of California move the Court for the appointment of a receiver in said cause, to take charge of the rents and profits accruing from the mining operations, mentioned in the complainants complaint.

VOORHIES & HESTER,
For plffs.

Jany 23d 1851.
Filed Jany 23d 1851.

H. C. MELONE,
Clerk.

DISTRICT COURT OF THE COUNTY OF SANTA CLARA.

DECEMBER TERM, A. D. 1850.

STATE OF CALIFORNIA,
County of Santa Clara.

TO THE HONORABLE JUDGE OF THE DISTRICT COURT OF SAID COUNTY:—

Your complainants, Maria Zac. de Bernal Berreyesa, widow of José Reyes Berreyesa, Maria del Carmen Berreyesa and her husband Lorenzo Pinedo, Loreta Berreyesa and her husband Juan Bojorques, Santiago Berreyesa, Jose de los Santos Berreyesa, Nemesio Berreyesa, Francisco Berreyesa, Fernando Berreyesa, Magdalena Berreyesa and her husband Maximo Fernandez, William Bassham, tutor of Jose Encarnacion Berreyesa, children and heirs of Jose Berreyesa, Richard Roman, James Hepburn, and Charles V. Stuart, residents of said county, represent to your Honor, that there is a suit now pending in said Court in their favor against Isidoro de la Torre, of Mazatlan in Mexico, Alexander Forbes, William and Eustachio Barron, of Tepic in Mexico, John Parrot, of San Francisco, James A. Forbes and Robert Walkinshaw, of said county of Santa Clara; which said suit has been instituted by your complainants to recover possession of a large and valuable tract of land known as the Rancho de la Cañada de

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los Capitancillos, *alias* Rancho of San Vicente, and also for a large amount of damages, on account of the trespass and wrongs mentioned in the complaint therein, and upon which tract of land is situated the Quicksilver mine known as the mine of Nueva Almaden, and which mine is an appurtenant of said land. They further represent that the said defendants in said suit have been and are engaged in working said mine and taking therefrom large quantities of valuable mineral ore, to wit, four thousand pounds per day, which they allege is of the value of two thousand Dollars; that they the said defendants are otherwise using and working said mine and appropriating the rents and profits derived therefrom to their own use, in fraud of the rights of your complainants, who charge and believe they are able to establish upon the trial of the suit aforesaid, that said defendants are trespassers upon them, and that the Rancho aforesaid, together with the said mine thereon situate is their rightful property as hereinafter stated, and that all the benefit and advantages, rents and profits arising therefrom justly and rightfully accrue to them.

They further represent, that many of the defendants are non-residents of this State, as will appear by reference to the admissions of the defendants in their pleading and affidavits in said cause, and your complainants believe that they will withdraw from said State their proportion of the profits accruing to them from the working of said mine as fast and whenever the same arises, and that the same thing will be done, as your complainants believe, of the profits accruing to the said defendants who are residents of said State; and your complainants believe that said defendants have not sufficient property or other means in said State to satisfy the Judgment which may be rendered in said suit; so that whatever Judgment which may be rendered in said suit will be unavailing unless the profits accruing from the working of the said mine be safely kept and retained in the hands of an honest careful person.

Your complainants further allege, that the defendants have used, and your complainants believe they will continue to use, all the means in their power to prevent said suit from coming to a trial, and that said suit on account of such resistance may be much delayed before the trial thereof. They further allege that said defendants, as they believe, fraudulently set up a claim to said land, without, as they believe, having any valid title thereto. The plaintiffs are the owners of said land, in fee simple, except the said Hepburn, Roman and Stewart, who have a joint interest with the other plaintiffs by a lease from them made last July to said Hepburn, Roman and Stewart for the term of twenty years from and after the said time of making said lease. The said complainants allege that the said Berreyesas have been in the peaceable possession of said land for at least nine years next before the said defendants first occupied the same and wrongfully obtained

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possession thereof. The said plaintiff, James Hepburn, states on oath the facts stated in the above complaint are in substance and matter of fact as he believes. Your complainants therefore pray that a Receiver be appointed to take charge of the accruing profits, and retain them subject to the order of said Court until said suit shall be be determined, and then to be subject to the order which the Court may make therein, and that your Honor grant such other relief as may comport with justice. Jany 23d, 1851.

VOORHIES & HESTER for Complainants.
JAMES HEPBURN.

Subscribed and sworn to before me, this 23d day of January, 1851.
H. C. MELONE, Clerk.

Filed, January 23, 1851. H. C. MELONE, Clerk.

BERREYESA, et. al.
against
FORBES, et. al.

Upon a motion by Plaintiffs to appoint a Receiver to take charge of the proceeds of the Quicksilver mine of New Almaden.

And now comes the parties by their attorneys, viz, the plaintiffs appearing by their attorney John B. Weller, and the defendants by their attorney, Wm. H. Rumsey, and the plaintiffs produce and file their affidavit herein. Whereupon the argument of counsel being heard, it is ordered by the Court that John W. Geary be appointed a Receiver whose duty it shall be to take charge of the Quicksilver which may be obtained by the defendants in working the mine in the pleadings mentioned, over and above what shall be necessary for the expenses incurred in prosecuting the mining operations. Said Geary shall receive said quicksilver as fast as the same may be smelted at the furnaces of the defendants, and said defendants are ordered to account to and turn over to the possession of the said John W. Geary the quicksilver aforesaid as often as called upon by him to do so, they taking the receipt of the said Geary for the amounts so turned over from time to time, and the said Geary shall execute and deliver to the defendants such receipts when demanded. The receiver will, as fast as the said mineral is received by him, or as often as is necessary, transport the same to the city of San Francisco or other suitable point of depot, and sell or ship the same as will be most conducive to the interest of these parties, and the monies arising from the sale of the said

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mineral shall be held subject to the order of the Court upon the final adjudication of the matters in this suit. Said Receiver before entering upon the duties of his office shall take and subscribe an oath before the Clerk of this Court well and truly to discharge his duties, and shall execute a bond to be approved by this Court or the Clerk thereof in vacation, in the sum of Two hundred and Fifty Thousand Dollars, conditioned to account for and pay over upon the order of the Court, the sums of money which he may receive in pursuance of this order. He shall produce and file in this Court, on or before the sixth day of each regular term thereof, a sworn statement of his accounts, and shall show in such statements the amount of money or the quantity of ore remaining in his hands, and the Court reserves the power of increasing the amount of said bond, and of requiring additional security upon the same at discretion. And the said Receiver shall be allowed such compensation as shall be adjudged reasonable and just by the Court.

STATE OF CALIFORNIA,
County of Santa Clara.

DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,
IN THE STATE AND COUNTY AFORESAID.

ALEXANDER FORBES, & als.
ads.
MARIA BERREYESA, & others,

James A. Forbes and Robert Walkinshaw, defendants in this cause, move that the order made by the Hon. Wm. Robert Turner, on the 24 January, 1851, appointing a Receiver for the purposes in said order mentioned, be revoked and set aside, the said order having been improvidently made, and being contrary to law.

PEACHY & BILLINGS,
Attorneys for Defendants.

Filed, Feb. 22, 1851.

H. C. MELONE, Clerk.

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DISTRICT COURT OF COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

FEBRUARY TERM, 1851.

BERREYESA, et. al.
vs.
ALEX. FORBES, et. al.

Be it remembered, that on the 22d day of February, 1851, the Court being in session, the defendants by their counsel moved the Court to set aside an order which the said Court had made herein, at the December term thereof, 1850, on the 24th day of January, 1851. and which order is as follows: ("see pages 27 and 28 of this transcript, for said order,") (here the clerk will set it out,) which motion the Court sustained and set aside said order. To which opinion the plaintiffs by their counsel except and pray that this their Bill of Exceptions may be signed, sealed, and made a part of the record in this cause, and which is accordingly done.

JNO. H. WATSON,
Judge.

Feb. 22, 1851.

Filed, Feb. 22, 1851. H. C. MELONE, Clerk,

IN THE THIRD JUDICIAL DISTRICT COURT,

IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

M. Z. BERREYESA, et. als.
vs.
JAMES A. FORBES, et. als.
and
M. Z. BERREYESA, et. als.
vs.
YSIDORO DE LA TORRE, et. als.

INTERROGATORIES PROPOUNDED BY DEFENDANTS

In the above entitled Causes, to Manuel Castañares in the City of Mexico.

1.—What is your name, age and profession?

2.—Have you ever resided in California, and if so, at what time, and how long?

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3.—Did you ever hold the office of Prefect or Secretary of the Prefectura of the first District of California; if so, at what time and how long?

4.—State if you know who was the Prefect and who was the Secretary of the Prefectura of the first District of California on the twenty-second day of September, 1842.

5.—State, if you know, whether your brother, Jose Maria Castañares, was Secretary or acting Secretary of the said Prefectura in the year, 1842?

6.—State, if you know, whether there was in California, in the month of September, 1842, any person other than your brother named Jose Maria Castañares?

7.—State, if you know, whether any person by the name of Jose Maria Castañares was Secretary or acting Secretary of said Prefectura in the month of September, 1842?

TRANSLATION OF THE FOREGOING INTERROGATORIES INTO THE SPANISH LANGUAGE.

1.—Diga, como se llama el declarante, su edad, y profesion?

2.—Diga, se ha sido residente en Californias, en que punto, en que fecha, y por cuanto tiempo.

3.—Diga, si fue Prefecto ó Secretario de la Prefectura del primer Distrito de Californias, y en que fecha, y por cuanto tiempo?

4.—Diga, si sabe quien fué Prefecto, y quien fué Secretario de la Prefectura, del primer Distrito de Californias en el dia veinte y dos de Septiembre de mil ochocientos cuarenta y dos?

5.—Diga, si sabe el declarante, si el hermano Jose Maria Castañares fué Secretario en propriedad o en interinato de la precitada Prefectura en todo el año mil ochocientos cuarenta y dos.

6.—Diga, si sabe que habia en Californias en Septiembre de mil ochocientos cuarenta y dos otra persona que amas del hermano del declarante se llamase Jose Maria Castañares?

7.—Diga, si sabe que en Septiembre de mil ochocientos cuarenta y dos el Secretario en propriedad o interinato de la precitada Prefectura se llamaba Jose Maria Castañares?

HALLECK, PEACHY & BILLINGS,
Attorneys for Defendants.

Filed, April 8, 1851. H. C. MELONE, Clerk.

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IN THE THIRD JUDICIAL DISTRICT COURT,

IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

M. Z. BERREYESA, et. als.
vs.
JAMES A. FORBES, et. als.
and
M. Z. BERREYESA, et. als.
vs.
YSIDORO DE LA TORRE, et. als.

INTERROGATORIES PROPOUNDED BY DEFENDANTS,

In the above entitled Causes, to José Maria Castañares, in the City of Mexico, Mexico.

1.—What is you name, age and profession?

2.—Have you ever resided in California; and if so, in what place or places, at what time, and how long?

3.—Did you ever hold the effice of Attorney General of the Superior Tribunal of California; and if so, at what time, and how long?

4.—State whether by the laws of Mexico you could, while Attorney General of said Tribunal, hold any other office, and whether, while such Attorney General, you ever did hold any other office in California, either temporary or permanent.

5.—State whether, while you were such Attorney General in California, you ever was acting Secretary of the Prefectura of the first District of California.

6.—State whether at any time you have been acting Secretary of said Prefectura.

7.—State whether as such acting Secretary of said Prefectura you ever recorded any title of a grant of land in California.

8.—State whether in the month of September, A. D. eighteen hundred and forty-two, you recorded in said Prefectura a title of a grant of land made by Governor John B. Alvarado to Sargent Jose Reyes Berreyesa.

9.—State whether you ever wrote on any such title of grant to Jose Reyes Berreyesa a certificate of such record.

10.—State whether you ever signed such certificate.

11.—State whether your recollection on this subject is clear and positive.

12.—State, if you know, whether there was any other person living in California, in the year eighteen hundred and forty-two, named Jose Maria Castañares.

13.—State, if you know, whether any person by that name was

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acting Secretary of the aforesaid Prefectura in the year eighteen hundred and forty-two.

14.—Have you a brother named Manuel Castañares?

TRANSLATION OF THE FOREGOING INTERROGATORIES INTO THE SPANISH LANGUAGE.

1. Diga como se llama el declarante, su edad y profesion?
2. Digo si ha sido residente en Californias, en que punto, en que fecha, y por cuanto tiempo?
3. Diga si fué ministro fiscal del tribunal Superior de Justicia de los Californios, y esprese la fecha en que tomo posesion de ese destino, y el dia en que cesó en el?
4. Diga si es cierto que por estar prohibido por la ley de Mexico á los fiscales de los tribunales superiores de justicia el tener otro empleo y si el que contesta turo otro en propriedad en interinato ó en comision, en Californias mientras que fué fiscal?
5. Diga si el que contesta turo ó no el de secretario interino de la Prefectura del primer Distrito de Californios en el tiempo que fue fiscal del Snperior Tribunal en Californios?
6. Diga si ha sido Secretario interino de dicha Prefeotura en algun tiempo?
7. Diga si, como tal secretario de dicha Prefectura tomo razon de algun titulo de concesion de tiersa en Californias?
8. Diga si tomó razon el que contesta en Septiembre de mil ochocientos cuarenta y dos en la precitada Prefectura de algun titulo de concesion de tierra dado al Sargento Jose Reyes Berreyesa?
9. Diga si estendio en tal titulo de concesion a Jose Reyes Berreyesa, un certificado de toma de razon?
10. Diga si ha firmado tal certificado?
11. Diga si hace recuerdo fijo y positivo de ese asunto.
12. Diga si habia en Californias en el año de mil ochocientos cuarenta y dos otra persona que amas del declarante se llamase Jose Maria Castañares?
13. Diga, si sabe que en todo el año mil ochocientos cuarenta y dos el secretario interino de la precitada Prefectura se llamaba Jose Maria Castañares?
14. Diga, si tiene el que contesta un hermano que se llama Manuel Castañares?

HALLECK, PEACHY & BILLINGS,
Attorneys for Defts.

Filed, April 8th, 1851

H. C. MELONE,
Clerk.

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IN THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

M. Z. Berreyesa et al.
vs.
Jas. A. Forbes et al.
&
M. Z. Berreyesa et al.
vs.
Ysidoro de la Torre et al.

Messrs. Weller & Jones, Atty's for Pltfs.

Gentlemen :—Take notice that Interrogatories have this day been filed to be propounded to Jose Maria Castañares and Manuel Castañares of the City of Mexico, Mexico, their answers to be used in the above entitled causes.

San Jose, April 8th, 1851.

HALLECK, PEACHY & BILLINGS.

I acknowledge the service of the within notice, this 9th day of April, 1851.

Wm. CLAUDE JONES,
Att'y for Berreyesa et al.

Filed, April 9, 1851.

H. C. Melone,
Clerk.

DISTRICT COURT, THIRD JUDICIAL DISTRICT.

State of California,
County of Santa Clara.

Maria Z. B. de Berreyesa
& others
vs.
James A. Forbes &
Robert Walkinshaw.

It is agreed by the parties that the interrogatories and cross interrogatories filed in the above case, to be propounded to Jose Maria Castaneras and Manuel Castaneras, shall be sent to the American Consul, at Mexico, and the testimony shall be taken and returned by him the

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same as by a Commissioner of Deeds duly appointed; and the parties waive all objection so the depositions or testimony arising from the fact that they are taken by the Consul, instead of a Commissioner of Deeds or other officer named in the Statute.

Should the Consul be absent from Mexico or unable to take the testimony, the above agreement applies to the acting Consul.

April 28, 1851.

HALLECK, PEACHY & BILLINGS,
Atty's for Dfts.
JONES & WALLACE,
of Counsel for Pltfs.

Filed, April 28, 1851.

H. C. MELONE,
Clerk.

DISTRICT COURT, THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of Santa Clara. } ss.

MARIA Z. B. DE BERREYESA
& others
vs.
YSIDORO DE LA TORRE
& others.

It is agreed by the parties that the interrogatories and cross interrogatories, filed in the above case to be propounded to Jose Maria Castaneras and Manuel Castaneras, shall be sent to the American Consul at Mexico, and the testimony shall be taken and returned by him the same as by a Commissioner of Deeds duly appointed; and the parties waive all objection to the depositions or testimony arising from the fact that they are taken by the Consul, instead of a Commissioner of Deeds or other officer named in the Statute.

Should the Consul be absent from Mexico or unable to take the testimony, the above agreement applies to the acting Consul.

April 28, 1851.

HALLECK, PEACHY & BILLINGS,
Atty's for Defts.
JONES & WALLACE,
of Counsel for Pltfs.

Filed, April 28, 1851.

H. C. MELONE,
Clerk.

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DISTRICT COURT, THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of Santa Clara. } ss.

MARIA Z. B. DE BERREYESA
& others
vs.
YSIDORO DE LA TORRE
& others.

And now on this fourth Monday of April, A. D. one thousand eight hundred and fifty-one, in obedience to the Summons by publication made by order of this Court, on the day of October last,

parties defendant in the above entitled cause do here by their Attorneys enter their appearance in said cause: and the said Defendants and also the Defendants James A. Forbes and Robert Walkinshaw do say, that the Plaintiffs in this cause are, and were at the time of the institution thereof citizens of the State of California, and that the Defendants Ysidoro de la Torre, a resident of Tepic in the republic of Mexico, is an alien and a subject of the Kingdom of Spain, that Alexander Forbes, another defendant, is an alien and subject of the Kingdom of Great Britain, that Eustachio Barron, James A. Forbes and Robert Walkinshaw are also aliens and subjects of the Kingdom of Great Britain, and that said Defendants were aliens at the time of the institution of this suit, and that Defendant John Parrot is, and was at the institution of this suit a citizen of the State of Virginia, that William Barron of Tepic is unknown to the said Defendants, that they do not believe that such a man exists, and that there is no person of the name William Barron who is in any way interested in the land in controversy. Therefore the above named Ysidoro de la Torre, Alexander Forbes, Eustachio Barron, James A. Forbes & Robert Walkinshaw, and John Parrot, averring that the matter in dispute in this cause exceeds the value of five hundred Dollars, exclusive of costs, pray for the removal of this cause for trial, into the next District Court of the United States to be held in this District, and that this cause may proceed no further in this Court, and Defendants offer good and sufficient security for their entering in said District Court on the first day of its next Session in this District, copies of the process against them in this cause, and also for their appearing in said Court on that day.

HALLECK, PEACHY & BILLINGS,
Atty's for Defendants.

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DISTRICT COURT, THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of Santa Clara.

On this, the twenty-eighth day of April, A. D. 1851, in open Court personally appeared Henry W. Halleck, one of the Attorney's subscribing the above petition, and made solemn oath that the facts set forth therein are true. Before me

H. C. MELONE,
Clerk.

Presented and filed in open Court.

H. C. MELONE,
Clerk.

DISTRICT COURT, THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of Santa Clara.

MARIA Z. DE BERREYESA
& others
vs.
JAMES A. FORBES &
ROBERT WALKINSHAW.

On this, the twenty-eighth day of April, the year eighteen hundred fifty-one, the defendants by their Attorneys appear in open Court and say, that the plaintiffs in the cause are, and were at the time of the institution thereof citizens of the State of California, and that they, the Defendants James A. Forbes and Robert Walkinshaw are now, and were at the time of the institution of said suit, aliens and subjects of the Kingdom of Great Britain.

Therefore the said Defendants James A. Forbes and Robert Walkinshaw, averring that the matter in dispute in this cause exceeds the value of five hundred Dollars exclusive of costs, pray for the removal of this cause for trial into the next District Court of the United States to be held in this District, and that this cause may proceed no further in this Court. And this they pray pursuant to the provisions of the Statute of the United States, entitled "An act to provide for extending the laws and the judicial system of the United States to the State of California," approved September 28, 1850; the said suit at which time was pending in this Court.

By their Atty's
HALLECK, PEACHY & BILLINGS.

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DISTRICT COURT, THIRD JUDICIAL DISTRICT.

STATE OF CALIFORNIA,
County of Santa Clara.

On this, the twenty-eighth day of April, A. D. 1851, in open Court personally appeared Henry W. Halleck, one of the Attorneys subscribing the above petition, and made solemn oath that the facts set forth therein are true. Before me

H. C. MELONE,
Clerk.

Presented and filed in open Court,

H. C. MELONE,
Clerk.

CROSS INTERROGATORIES BY COMPLAINANTS.

M. Z. BERREYESA et als
vs.
JAMES A. FORBES et als

AND

M. Z. BERREYESA et als
vs.
YSIDORO DE LA TORRE et als

The Complainants reserving to themselves the benefit of all legal objections to each and every of the interrogatories in chief propounded by the Defendants in the above entitled causes to Manuel Castaneros of the City of Mexico, and more particularly reserviug the benefit of all legal objections to the interrogatories in chief numbered as "4th," "8th," "9th," and "10th," propound to the said Manuel Castanaros the following cross interrogatories:

1st. Are you related to any of the parties claiming any part of the mine of Nueva Almaden, or interested in the same under the claim of the Defendants, and if so related, in what degree?

2nd. Do you claim any interest in said mine, or have you ever claimed any interest in the same, and have you ever sold any interest in said mine to the Defendants or to either of them?

3d. Since what time has Jose R. Berreyesa been in possession of the Rancho of San Vicente, granted to him by Governor Juan B. Alvarado, in the year 1842: Was he (Berreyesa) not in possession of said Rancho immediately after said grant was made?

4th. Was not Jose R. Berreyesa publicly known as the owner of said Rancho?

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M. Z. BERREYESA,
vs.
DIEGO A. FORBES ET ALS.
Y
M. Z. BERREYESA ET ALS
vs.
YSIDORO DE LA TORRE ET ALS.

Los Actores reservando el derecho de toda objeccion legal que haya en los interrogaciones que se proponen por los Demandados (en las causas arriba) al Señor Don Manuel Castenara y mas particularmente reservando el derecho de toda objeccion legal que haya en las interrogaciones como "4°" "8°" "9°" y "10°" propuestas al dicho Señor Don Mannel Castanaro preguntan las contra interrogaciones siguientes:

1° ¿Es Vmd pariente de alguno de los partes que reclaman parte de la mina de Nueva Almaden ó de persona cualquiera interesada en la misma mina bajo el reclamo de los Demandados? y si lo es diga Vmd en que grado.

2° ¿Reclama Vmd interes alguno en la dicha mina, ó tuvo Vmd en algun tiempo reclamo alguno en la dicha mina, y havendido Vmd. en algun tiempo algun interes en la dicha mina a los Demandados ó á cualquier de ellos?

3° ¿Desde cuando tra tenido el Señor Don Jose R. Berreyesa la posesion del Rancho de San Vicente, el cual le concedio por el Gobernador Juan B. Alvarado en el año 1842 tenia Berreyesa la posesion del dicho Rancho luego despues de hecha la dicha concesion?

4° ¿No estaba el Señor Don Jose R. Berreyesa reconocido por todos y publicamento como dueño del dicho Rancho?

Filed April 23d, 1851. H. C. MELONE, Clerk.

M. Z. BERREYESA ET ALS.
vs.
JAMES A. FORBES ET ALS.
AND
M. Z. BERREYESA ET ALS.
vs.
YSODORO DE LA TORRE ET ALS.

The Complainants reserving to themselves the benefit of all legal objections to the interrogatories in chief propounded by the Defend-

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ants in the above named causes to Jose Maria Castenaros of the City of Mexico and more particularly reserving the benefit of all legal objections to the interrogatories in chief numbered as "4th," "8th," "9th," and "10th," propounded to the said Jose Maria Castanaros, the following eross interrogatories.

1st. Are you related to any of the Parties claiming any part of the Mine of Nueva Almaden or interested in the same under the claim of the Defendants, and if so related in what degree?

2d. Do you claim any interest in said mine or have you ever claimed any interest in the same, and have you ever sold any interest in said mine to the Defendants or to either of them?

3d. Since what time has Jose R. Berreyesa been in possession of the Rancho of San Vicente granted to him by Governor Juan B. Alvarado in the year 1842: Was he Berreyesa not in possession of said Rancho at the time of said grant, or did he not go into the possession of said Rancho immediately after said grant was made?

4th. Was not Jose R. Berreyesa publicly known as the owner of said Rancho?

TRANSLATION OF THE FOREGOING CROSS INTERROGATORIES BY COMPLAINANTS.

M. Z. BERREYESA
vs.
DIEGO A, FORBES ET ALS.
Y
M. Z. BERREYESA ET ALS
vs.
ISIDORO DE LA TORRE ET ALS

Los actores, reservando el derecho de todo objeccion legal que haya en las interrogaciones que se proponen par las Demandados (en las causas arriba) al Señor Don Jose Maria Castenara y mas particularmente reservando el derecho de toda objeccion legal que haya en las interrogaciones numerados como "4º" "8º" "9º" y "10º" propuestas al dicho Señor Don Jose Maria Castenara, preguntan las contra, interrogaciones siguentas.

1º ¿Es vmd pariente de alguno de los partes que reclaman parte de la mina de Nueva Almaden ó de persona cualquiera interesada en la misma mina bajo el reclamo de las Demandados? y si lo es diga vmd en que grado.

2º ¿Reclama Vmd. interes alguno en la dicha mina ó tuvo vmd. en algun tiempo reclamo alguno en la dicha mina; y ha vendido vmd en algun tiempo algun interes en la dicha mina á los Demandados ó a cualquier de ellas?

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3° ¿Desde cuando ha tenido el Señor Don Jose R. Berreyesa la possession del Rancho de San Vicente, el cual le concedio por el Gobernador Juan B. Alvarado en el año 1842, tenia Berreyesa la posesion del dicho Rancho al tiempo mismo de la dicha concesion, ó tomo el la posecison del dicho Rancho luego despues de hecha la dicha concesion?

4° ¿No Estaba el Señor Don Jose R. Berreyesa reconocido por todos y publicamente como dueño del dicho Rancho?

Filed by consent of the parties April 28th 1851.

H. C. MELONE,
Clerk.

Know all men by these presents, That we, Isidoro de la Torre, Alexander Forbes, Eustachio Barron, James A. Forbes, Robert Walkinshaw and John Parrott, principals and Henry W. Halleck, Frederick Billings, William E. Barron, sureties are held and firmly bound jointly and severally unto Maria Z. de Bernal Berreyesa, widow of Jose Reyes Berreyesa, Maria del Carmen Berreyesa and her husband Lorenzo Penada, Loreto Berreyesa and her husband, Juan Bojorques, Santiago Berreyesa, Jose de los Santos Berreyesa, Nemecio Berreyesa, Francisco Berreyesa, Fernandez Berreyesa, Magdalena Berreyesa and her husband Marcio Fernandez William Bassham Tutor of Jose Encarnacion Berreyesa, Richard Roman, Charles V. Stuart, and James Hepburn in the sum of One Million Dollars to the payment whereof well and truly to be made we bind ourselves our and each of our executors administrators firmly by these presents jointly and severally.

Witness our hands and seals this twenty-eighth day of April A. D. eighteen hundred fifty-one.

Whereas on the fifth day of October A. D. One thousand eight hundred and fifty a suit was instituted in the District Court of the Third Judicial District of the State of California for the County of Santa Clara by said Maria Z. de Bernal Berreyesa and the others above named as obligees against the above bounden principals for the recovery of certain lands known as the Rancho de la Cañada de los Capitancillos situate in said County, and whereas the above bounden principals have filed their petition in said District Court for the County of Santa Clara praying for the removal of said cause into the next District Court of the United States to be held in the District where the said suit is pending.

Now therefore if the above bounden principals shall enter copies of the process against them in this cause, in the United States District

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Court next to be holden in the District where the said cause is now pending, and shall also enter their appearance in said United States District Court in said cause at its next term, then these presents shall be null and void, otherwise in full force and effect.

Executed the day and year aforesaid.

I. DE LA TORRE, by his Atty in fact WM. E. BARRON. [SEAL]
ALEX. FORBES, by his Atty in fact WM. E. BARRON. [SEAL]
EUSTACE BARRON, by his Atty in fact WM. E. BARRON, [SEAL]
JAS. ALEX. FORBES, [SEAL]
ROBERT WALKINSHAW, [SEAL]
WM. E. BARRON, [SEAL]
JOHN PARROTT by his Atty in fact H. W. HALLECK, [SEAL]
H. W. HALLECK, [SEAL]
FREDERICK BILLINGS, [SEAL]

Witness to all signatures on this page.

H. C. MELONE,
Clerk.

Presented and filed in open Court April 28th, 1851.

H. C. MELONE,
Clerk.

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

M. Z. BERREYESA ET ALS.
vs.
YSIDORO DE LA TORRE AT ALS.

It is hereby agreed by and between the undersigned that the petition of the Defendants in the above entitled cause for removal into the District Court of the United States for the Northern District of California, presented and filed in this Court on the 28th day of April 1851, be granted and that the District Judge of the said Third Judicial District order the removal of the said cause in accordance with the prayer of the said petition.

And it is further agreed by and between the undersigned that the following order of Court be entered up in this case, viz.

The petition of Ysidoro de la Torre, Alexander Forbes, Eustachio Barron, Jas. A. Forbes, Robert Walkinshaw, and John Parrott, Defendts. in the above entitled cause having been presented to and filed in this Court on the 28th day of April, A. D. 1851, simultaneously with their appearance by the entry thereof on the calender of this Court praying for the removal of the above entitled cause from this

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Court into the District Court of the United States for the Northern District of California (sitting as a Circuit Court) in conformity with the act of Congress of the United States made and provided, and the said defendants having having filed a bond with good and sufficient security which has been accepted by this Court, and it appearing that the matter in dispute exceeds the sum of five hundred Dollars exclusive of costs, and that said Defendants have complied in all respects with said act of Congress; It is ordered that the prayer of said petition be granted and that the said Defendants do appear in the said District Court of the U. S. for the Northern District of California (sitting as a Circuit Court) to be held in the town of San Jose & County of Santa Clara in this State on the 15th day of April next on the first day of said term & that they do file in said Court copies of the process and complaint in this case together with copies of all other papers of file in this Court in the above entitled cause.

WILLIAM T. WALLACE,
Atto for Plaintiffs.

Feby 5, 1852.

HALLECK, PEACHY & BILLINGS,
Atty's for Defendts.

Filed Feby 5, 1852.

H. C. MELONE,
Clerk.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I John B. Hewson County Clerk of Santa Clara County and Ex-officio Clerk of the District Court of the 3d Judicial District of the State of California, in and for said County, do hereby certify, that the foregoing pages, numbered from one, to forty-nine inclusive contain a full, true, and complete Transcript, of all the papers filed, and the proceedings had thereon, in the aforesaid District Court, in the suits of Maria Z. Bernal de Berreyesa et als, vs. James Alexander Forbes & Robert Walkinshaw, and Maria Z. Bernal de Berreyesa et als, vs. Isidoro de la Torre et als, as taken from the files and Records in said Court.

In Testimony whereof, I have hereunto set my hand, and affixed the Seal of Said Court this 15th day of August A. D. 1857.

JOHN B. HEWSON,
Clerk.

{ SEAL }

Filed Aug. 21, 1857.

W. H. CHEVERS,
Dep. Clerk.

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DEPOSITION OF GEO. M. YOELL.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

San Francisco, August 18th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee, appointed by the District Court of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came George M. Yöell, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 366 on the dockat of the said Board of Commissioners, and was duly sworn and testified as follows:

Present—U. S. District Attorney represented by Edmund Randolph, Esq., and Frederick Billings, Esq., for claimants.

QUESTIONS BY EDMUND RANDOLPH, ESQ.

1*st Question.*—What is your name, age, occupation, and place of residence?

1*st Answer.*—My name is George M. Yöell; 34 years old; I am Deputy Recorder of Santa Clara County, and I reside In San José, Santa Clara County.

2*d Question.*—Have you been subpoened in this case?

2*d Answer.*—I have, and have been ordered to bring certain documents with me.

3*d Question.*—Please produce that document?

3*d Answer.*—The witness here produced a document.

4*th Question.*—What document is that?

(Question objected to by claimant's attorney, as being incompetent and immaterial.)

4*th Answer.*—This is a document filed among the records of Santa Clara County, and also of record in the same office.

(Answer objected to—same grounds as the question.)

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5th Question.—Can this document be filed in this case?

5th Answer.—I cannot part with it, as I am in duty bound to return it to the records of Santa Clara County.

6th Question.—Look at the document marked "Exhibit R., No. 1," attached to your deposition, and please state if it is a copy of the original produced by you, and if it was made by you.

6th Answer.—This is a certified traced copy made by myself, as the County Recorder's Deputy of Santa Clara County.

(The attorney for the claimant objects to the introduction of "Exhibit R. No. 1," first, because the original has not been duly proved; 2d, because it is secondary evidence; 3d, because the evidence is immaterial and irrelevant.)

7th Question.—Please look at the words in red ink, on the first page of Exhibit R., No. 1—state what those words are and explain what they mean.

7th Answer.—The words are, "The above is written in pencil. S. A. Clark, Recorder, by Geo. M. Yöell, Deputy;" that alludes to the filing which is traced above, on the original document, purporting to be signed by J. T. Richardson, the former Recorder of Santa Clara County.

8th Question.—Look at the 9th page of the same exhibit—state what the words are written at the foot of the page, in red ink, by whom they were written, and what they mean.

8th Answer.—The words are "'Blots, &c.' S. A. Clark, Recorder, by Geo. M. Yöell, Deputy;" it was made to give as correct a copy of the original as possible, by myself, and to show that the blots were on the original at the time it was made by me.

9th Question.—Look on the last page of the paper which you first produced, and which you say is on file in the County Recorder's office, in Santa Clara county—read what words are written on said page, and say whose hand writing they are in.

9th Answer.—They words are, "Filed (for) February 25th, A. D. 1853, at 11 o'clock A. M. J. M. Murphy, Recorder, by S. O. Houghton, Deputy." That is in the handwriting of S. O. Houghton, a former Deputy Recorder of Santa Clara County, whose hand writing I am familiar with.

10th Question.—Look at the first page of the same document produced by you, and please read the first words written thereon, and state with what it is written, whether with ink or pencil.

1th Ans.—The words are, "Filed 3 o'clk P. M., 18 Jany, 1851. J. T. Richardson, Recorder S. C. C." It is written with a lead pencil, in the hand writing of J. T. Richardson, Recorder of Santa Clara Co.

11th Ques.—Please take the original document which you have

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stated to be on file among the records in the office of the County Recorder of the county of Santa Clara, and examine carefully what water marks, or manufacturer's marks are to be found upon it upon each page and each sheet thereof, so as to make it appear in your answer what marks of said nature exist upon each sheet and page separately, of which the said original document is composed.

(Question objected to by claimant's attorney, on the grounds that the evidence sought to be obtained is secondary, incompetent, irrelevant, and immaterial.)

11*th Ans.*—I find on the first page the following:

G B
F
E M VEDOVA

and also another figure would I could not make out.
On the second page, P^{s}
On the third page, GIORMAGNANIEE.
On the fourth page there is a water mark with the "scale of justice" on in the center.
On the fifth there is "Fleur de Lis" as water mark.
On the sixth page is P$^{s.}$
On the seventh the same as on the third.
On the eighth the same as on the sixth.
On the ninth the same as on the third and seventh.
On the last page is FABI NI
12.

(Answer objected to by claimant's attorney as follows; each and all the answer given by the witness to question eleven are objected to for reasons stated in objection to the question, and also for the reason that the answers are vague and uncertain, and give no definite intelligible description of the marks in question.)

Ques. 12*th.*—Are the water marks, or manufacturer's marks, to which you have just testified, marked on the traced copy marked "Exhibit R., No. 1?"

Ans. 12*th.*—They are not; it would be very difficult to trace them.

Ques. 13*th.*—Will you please to state in what manner this original document is put together, and of how many sheets it is composed?

Ans. 13*th.*—This original document is composed of five sheets of paper—four sheets inside of one sheet—each sheet of two leaves—the outside leaf appearing to have formed one sheet, but I cannot say for certain, as they are torn or very much worn. The first page contain

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the words, in pencil mark, "Filed 3 o'clk P. M. 18 Jany, 1851. J T. Richardson, Recorder S. C. C.;" and in ink, the following: "Posesion de la Mina de Santa Clara, Año de 1845."

On the last page are the words, in ink:

"Filed (for) February 25th, A. D. 1853, at 11 o'clock A. M. J. M. Murphy, Recorder, by S. O. Houghton, Deputy;" and those two leaves compose the outside of said document. The first sheet inside purports to be a petition, signed by José Castro, as representative of Andres Castillero, and addressed to the Alcalde of the first denomination of the Pueblo of San José de Guadalupe, and on the margin there is an order, purporting to be signed by Pacheco. That is all on that sheet.

On the next sheet there is a petition, purporting to be signed by Andres Castillero, addressed to the Alcalde of the first denomination. That is all there is on the second sheet.

The next sheet contains a petition from Andres Castillero, to the Alcalde of the first denomination, and is all that is contained on the third sheet.

On the fourth sheet purports to be a grant and possession to Andres Castillero, from Antonio Maria Pico, and witnessed by Antonio Suñol and José Noriega; that is all, except the County Recorder's certificate, which is contained on this sheet.

(The foregoing question and answer, and all questions and answers relative to words, marks, appearances, characters or contents, of the document spoken of by the witness, as on file in the office of Santa Clara County, objected to by claimant's counsel, for the reason that the said original document is not introduced in evidence, and because the testimony is secondary and incompetent, and immaterial, and also vague and uncertain.)

Ques. 14.—Please state how the pages of the traced copy correspond with the sheets of the original, which you have been just testifying to.

Ans. 14.—Page No. 1 of the traced copy corresponds with the first outside leaf of the original.

Pages 2 and 3 of the traced copy correspond with the first inside sheet of the original.

Pages 4 and 5 of the traced copy correspond with the second inside sheet of the original.

Page 6 corresponds with the third inside sheet of the original.

Pages 7, 8, and 9 corresponds with the fourth inside sheet of the original document.

And page 10, of the traced copy, corresponds with the last outside leaf of the original document.

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Ques. 15.—Please look at the third inside sheet of the original document, and state whether all the writing on the said sheet is in the same hand.

Ans. 14.—I should not say it was.

(Question and answer objected to on same grounds as question and and answer No. 13, and for the further reason that the witness has not been proved to be an expert.)

Ques. 16.—Will you please state the words which you think are written in a different hand writing from the rest?

Ans. 16.—After the word "presentacion," on this sheet, the words "no llendo en papel del sello p^{r} no haberlo" appear to me to have been written in a different handwriting.

(Question and answer objected to for same reasons as the question and answer above.)

Ques. 17.—How is the writing on said sheet signed, and how addressed?

Ans. 17.—Signed with the name of Andres Castillero, and addressed to the Alcalde of the first denomination of the Pueblo San Jose Guadalupe, dated Santa Clara, December 3d, 1845.

Ques. 18.—What is your knowledge of the general subject of hand writing?

Ans. 18.—I can tell a good hand writing from a bad one; I am a clerk by profession, and I can generally tell two different hand writings when I see them on one sheet of paper.

CROSS-EXAMINATION.

Ques. 19.—State as to the words which you say appear on the 3d inside sheet, of which you have been testifying as a different hand writing from the balance of the page, wherein they appear to differ from the words going before and the words coming after.

Ans. 19.—They appear to be written in a heavier hand than the words going before; that is all the difference I can find. That appears to me to be the only difference I can find on the page before and after.

DIRECT RESUMED.

Ques. 20.—Look again at the writing referred to, and see whether the words which appear to you to be a different hand writing from the rest of the writing, present any difference as to spaces between the lines of the writing.

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(Question objected to, because the witness was examined in chief upon this point, and the examination closed; second, because it was a leading question; and third, because the witness stated all the differences he could perceive.)

Ans. 20.—The words "del sello p^{r}. no haberlo" appear to be written a little closer to the lines above and below than the rest of the document.

(Page 6, of the traced copy, corresponds with the third inside sheet of the original document.)

GEO. M. YOELL.

Sworn to and subscribed before me, this 18th day of August, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

EXHIBIT R., No. 1.

(ACT OF POSSESSION—ALMADEN MINE.)

(COPY.)

Filed 3 o'clk P. M. 18 Jany, 1851.

J. T. RICHARDSON,
Recorder S. C. C.

"The above is written in pencil."

S. A. CLARK,
Recorder,
BY GEO. M. YÖELL,
Deputy.

POSESION DE LA MINA DE S^{TA}. CLARA, AÑO DE 1845.

SÖR. ALCALDE DE 1^{A}. NOMINACION DE EL PUEBLO DE S. JOSE DE GUADALUPE

PUEBLO DE S. JOSE G. JUNIO 22 DE 1846.

Como lo pide la parte inclullase este y Archibar. PACHECO.

Jose Castro Ten^{te} coronel de caball^{a}. de ejercito Mejicano, natural de este Departam^{to} ante la notoria justificacion de V. comparesco y digo: que representando hoy la persona y derechos, de el Capitan D. Andres Castillero y demas individuos q. forman la compania (sien-

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do yo uno de los acsionistos) en la mina de asoge q. denuncio dho Sōr. Castilleros el dia tres de Diciembre de mil ochocientos cuarento y cinco y se nos dio la pocesion el dia treivo la de el mismo mes y año arreglandome en todo á las leyes de mineria titulo sesto articulo primero en q. consede a los descubridores de minerales nuevos, tres pertenencias continuas ó interrumpidar con las medidas designadas por ley; y por combenir asi al derecho que tiene la compania da hoy por deducidas ante V. las tres pertenencias ó continuacion de la primera, mereciendole que se sirva unir este escrito al espediente de denuncio para q. quede archivado y conste en todo tiempo. No llendo en papel de el sello correspondiente por no haberlo.

A. V. Suplico provea de comformidad en lo que recibire merced y justicia.

Sta Clara Junio 27 de 1846.

JOSÉ CASTRO.

Sor Alcl. de 1a. Nominor

Andrés Castillero, capn. de cabe Permte. y residente hoy en este Departamto ante la notoria justificacion de V. hace presente: Que habiendo descubierto una veta de plata con ley de oro en terreno del Rancho perteneciente al Sargte. retirada de la compania Presidial de S. Franco. Jose Reyes Berreyeza; y queriendo trabajarla en compania, suplica a V. q. araeglada a la ordenanza de mineria de sirva fijar rotulones en los parages publicos de la jurisdiccion pa. q. llegada el tiempo de la posesion juridica, asegure mi derecho segun las leyes de la materia.

A. V. suplica, provea de conformidad, en lo que recibiré merced y justicia: admitiendo este en papel comun por falta de sellada correspondiente. Mision de Santa Clara Nove 22, de 1,845.

ANDRES CASTILLERO.

Sr. Alcalde de 1a nominacion del Pueblo de Sn Jose Guadalupe.

Andres Castillero Capitan de Caballeria permanente ante la notoria justificacion de V. compareno y digo: que envallando el mineral que con anterioridad denuncia a en Jusgado he vacar á mas de plata con ley de oro Azogue lo que de en primeria de algunos concurrentes que podre cilar en caso opertuno, y por combenir asi á mi derecho le he de mereria á V. que unia al escrito de denuncien se archive esta presentacion no llendo en papel del sello pr. no haberlo.

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A. V. Suplico provea de conformidad en lo q. recivire merced y Justicia. Santa Clara Diciembᵉ 3 de 1845.

ANDRES CASTILLERO.

Ne encontrandose en el Departᵒ de California Diputacion de Mineria y siendo esta la unica vez desde la poblaeion de la Alta California que se trabaje con arreglo a las leyes un mineral, y carviendo ademas de Juez de letras el Segunda Distrito Yo, el Alcalde de 1ª nominacion C. Antonio Mª Pico he benido acompañado de dos testigos pª. actuar por reseptoria, a falta de escrivano publico que no le hay, para dar poverian juridica de la Mina conocida con el nombre de Santa Clara en esta jurisdiccion situada en el Rancho del Sargente Jose Reyes Berreyesa, por que habiendo teniendo el tiempo que señala la ordenanza de mineria para deducir en accion el C. Andres Castillero y que otros pudieren alegra mejor derecho desde el tiempo del denuncia a la fecha y encontrandose dicho mineral con abundancia de metales esplutadas, el paso echo con las reglas del ante, y produciendo la elaboracion de la mina abundancia de Azogue liquid segun las muestras que tiene el Jusgado, y utando tan recomendado por leyes sigentes la proteccion de un articulo tan necesario para la amalgamacion de oro y plata en la Republica he benido en consederle tres mil varas por todos rumbus a reserva de lo que señale la ordenanza Genˡ de Mineria por sea trabajara en compª de lo que doi fe; firmando con migo los testigos y quedando agregado este acto de posesion al cumulo del espediente que quedo depositado en el archivo de mi cargo no yendo puesto en el papel del Sello respectivo que no le hay en los terminos de la ley.

Juzgado de Sⁿ Jose Guadalupe Diciembᵉ de mil ochocientos cuarenta y cinco.

ANTONIO Mª PICO.

De asta.
ANTONIO SUÑOL.

De asta.
JOSE NORIEGA.

Recorded (at request of J. Alex. Forbes) at 12 o'clock M., March 16th, A. D. 1855, in Book G. of Deeds, on pages 484, 485 and 486, Records of the County of Santa Clara.

S. A. CLARK, *County Recorder*.
BY F. LEWIS, *Deputy*.

"Blots, &c."

S. A. CLARK, *Recorder*.
BY GEO. M. YÖELL, *Deputy*.

Filed (for) February 25th, A. D. 1853, at 11 o'clock A. M.

J. M. MURPHY, *Recorder*.
BY S. O. HOUGHTON, *Deputy*.

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RECORDER'S OFFICE, SANTA CLARA COUNTY, CALIFORNIA, July 25th, A. D. 1857.

I hereby certify that the foregoing, on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of this, is a full, true, correct, and exact traced copy of an instrument at present in this office, and which said instrument is also of record, and recorded in Book G. of Deeds, pages 484, 485, and 486.

SEAL. Given under my hand and official seal, at office, in the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.
BY GEO. M. YÖELL,
Deputy.

DEPOSITION OF H. C. MELONE.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, Aug 19, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee appointed by the District Court of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came H. C. Melone, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Prlvate Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

PRESENT:—U. S. District Attorney represented by Edmund Randolph, Esq., and Frederick Billings, Esq., for claimant.

QUESTIONS BY EDMUND RANDOLPH, ESQ.

1st Ques.—What is your name, age, and place of residence?

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1st Ans.—My name is H. C. Melone, fifty years old, and I reside in Santa Clara County since September, 1849.

2d Ques.—Heve you held any public office in Santa Clara County, or what is now Santa Clara County; and if so, when, and what?

2d Ans.—I was clerk of Court of First Instance, from Oct. 1st, 1849, until April, 1850, when the State Government was formed. I was then elected County Clerk of Santa Clara County, and held that office until October, 1853.

3d Ques.—During the time that you were Clerk of First Instance was there any litigation in that court respecting the quicksilver mine known as New Almaden?

3d Ans.—There was.

4th Ques.—Please look at the papers now shown you, and say what they are.

4th Ans.—The first paper is a petition of Robt. Walkinshaw to Judge R. M. May, of the Court of First Instance, asking to be put in possession of the quicksilver mine; now marked "Exhibit R, No. 3."

The second paper is a citation and injunction restraining James Alexander Forbes from working the mines, now marked "Exhibit R, No. 4."

The third paper is the bond of Robt. Walkinshaw and Antonio Gomez; now marked "Exhibit R, No. 5."

The fourth paper is a notice from Robert Walkinshaw to James Alex. Forbes; now marked "Exhibit R, No. 6."

The fifth paper is a sworn answer of James Alexander Forbes, in the hand-writing of J. M. Jones, attorney for Forbes, now marked "Exhibit R, No. 7."

The sixth paper is the transcript of proceedings in the same matter, before Peter H. Burnett, President of the Superior Tribunal of California; now marked "Exhibit R, No. 8."

5th Ques.—Are the above some of the original papers in the suit referred to in your answer?

5th Ans.—They are.

6th Ques.—In whose hand-writing are the bodies of those papers?

6th Ans.—"R, No. 3," is in the hand-writing of Horace Hawes, attorney for Robt. Walkinshaw.

"R, No. 4," I think is in the hand-writing of C. T. Ryland, a lawyer of San José.

"R, No. 5," is in the hand-writing of Horace Hawes.

"R, No. 6," I think is in the hand-writing of C. T. Ryland.

"R, No. 7," is in the hand-writing of J. M. Jones, attorney for James Alexander Forbes.

"R, No. 8," I do not know the hand-writing of the body, but the order is in the hand-writing of Peter H. Burnett, and that is his own signature.

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7th Ques.—Do you know the signature of Robert Walkinshaw, and is this his signature which is appended to "Exhibit R, No. 3?"

7th Ans.—Mr. Walkinshaw's name is signed twice on said document, and they are both his genuine signatures.

8th Ques.—Do you know the signature of R. M. May, judge of the 1st Instance? if so, state if the signature appended to "Exhibit R, No. 4," is his genuine signature.

8th Ans.—I know his signature, and it is his genuine signature.

9th Ques.—Do you know the signatures of "Exhibit R, No. 5?" if so, state whose signatures they are, and whether they are genuine or not.

9th Ans.—I know them all; the signatures of Robt. Walkinshaw and Antonio Gomez, they are both genuine; the witnesses signatures are also genuine.

10th Ques.—The same question as to signatures of "Exhibit No. 6."

10th Ans.—The signature to "Exhibit R, No. 6," is Robert Walkinshaw's genuine signature.

11th Ques.—The same of "R, No. 7."

11th Ans.—The signature is James Alex. Forbes; it is his genuine signature.

12th Ques.—The same of "R, No. 8."

12th Ans.—Has already been testified to.

13th Ques.—During the time that this litigation was pending, have you heard the parties plaintiff and defeudant converse on the subject of their right and title and claim in the New Almaden mine? and if yea, what declarations have you heard them make?

(Question objected to by claimant's counsel on the ground that the testimony sought is immaterial, incompetent, irrelevant, and hearsay.)

13th Ans.—I have conversed with both of the parties on the subject, about their right to the possession of the mine, and controlling it. I never heard Mr. Walkinshaw say anything about what title he held under, but I have heard Mr. Forbes on several occasions say he held it under a denouncement.

(Answer objected to on same ground as the objection to the question, and also because it is not responsive.)

14th Ques.—Did you ever hear either Forbes or Walkinshaw, at the time mentioned above, claim to hold the mine by any other right than that of denouncement?

(Question objected to on same ground as preceding question, and also because it is leading.)

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14th Ans.—Not to my recollection.

15th Ques.—Did you ever hear, at that time, either Forbes or Walkinshaw speak of having any right to the land in which the mine is situated, by grant from the Government at the City of Mexico, or from any other source?

(Objected to for same reasons as 14th question.)

15th Ans.—I do not recollect of having ever heard either of them claim it under a grant of any kind.

16th Ques.—Did you ever hear them or either of them, at the time mentioned, speak of having received from the President of Mexico, or from the Junta de Fomento y Administrativa de Mineria, any confirmation of their mining rights and mining possession under their denouncement?

(Same objection as to question preceding.)

16th Ans.—It was about that time, but I cannot say that it was exactly at that time, Mr. Forbes told me that they had got their right to the mine from the City of Mexico established about three days before the treaty of peace was ratified.

17th Ques.—Did you charge your mind particularly with these statements of Mr. Forbes?

(Same objection as the preceding question.)

17th Ans.—I did somewhat, sir.

18th Ques.—Do you remember anything else stated by Forbes or Walkinshaw, about that time, upon the subject of their right to this mine?

(Same objection as preceding question.)

18th Ans.—I do not think I ever heard any more that what I have stated. I never heard Mr. Walkinshaw say anything of the right of the mine more than the right of possession amongst the owners.

19th Ques.—What were your opportunities to hear either of these parties speak on this subject? were they frequent or not?

(Same objection as preceding question.)

19th Ans.—My opportunities were very good at that time. I saw them almost every day, and held conversations with them frequently.

20th Ques.—Were there any other proceedings about that time that

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you have spoken of taken in reference to the mine of New Almaden; if so, what were they, and by whom?

(Same objection as preceding question.)

20th Ans.—There was another proceeding had by Horace Hawes.

21st Ques.—Who was Horace Hawes? What connection, if any, did Horace Hawes have with the litigation at that time pending between Walkinshaw and Forbes, and of which you have just testified?

(Same objection as preceding question.)

21st Ans.—Horace Hawes was the attorney for Walkinshaw in the suit of which I have been speaking.

22d Ques.—Do you mean to say that Horace Hawes was attorney for Walkinshaw in said suit against Forbes, at the same time at which he took the proceedings in reference to the mine of New Almaden, of which you have just spoken in your answer to the 20th question?

(Same objection as preceding question.)

22d Ans.—It was about that time.

23d Ques.—Was that litigation still pending at the time when any part of the proceedings of Horace Hawes was taken?

(Same objection as preceding question.)

23d Ans.—It was.

24th Ques.—A paper is now shown to the witness, and he is asked what it is.

24th Ans.—He says that it is a paper purporting to be a denouncement of the mine of New Almaden by Horace Hawes; a certified copy of the original examined and compared by himself, and says that it is a true and correct copy.

25th Ques.—Where is the original of that paper?

25th Ans.—It is in the clerk's office in San José.

26th Ques.—In whose hand-writing is the original there, if you remember?

26th Ans.—In the hand-writing of Horace Hawes, with his genuine signature attached to it.

27th Ques.—Before whom does the paper purport to have been executed?

27th Ans.—Before R. M. May, First Alcalde of the District of San José, and witneessed by myself and John T. Richardson, and I saw the paper executed.

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28th Ques.—By whom is the order which follows on the above paper signed?

28th Ans.—It was signed by R. M. May, First Alcalde of the District of San José, and witnessed by myself and James F. Reed.

29th Ques.—And the writing which follows the above, by whom was that signed?

29th Ans.—R. M. May, First Alcalde, and Judge of the First Instance.

30th Ques.—Did you post up the notices of this denouncement of Horace Hawes, in pursuance of the order of the Alcalde?

30th Ans.—I did.

31st Ques.—For how long a time did you post up those notices?

31st Ans.—I posted three notices three consecutive Sundays upon the church door of the Pueblo of San José, the Juzgado, and the church at Santa Clara.

32d Ques.—Were you paid for your labor?

32d Ans.—I was paid by Mr. Hawes.

33d Ques.—During the pendency of these proceedings and denouncements, did you hear any conversations of Walkinshaw, Forbes or Hawes, on the subject of the title and ownership of the New Almaden mine?

(Question objected to for same reason as 14th question.)

33d Ans.—I had frequent conversations with Mr. Hawes about the title, but I do not recollect if I had any with Forbes or Walkinshaw. Mr. Hawes contended that Forbes and Walkinshaw, and all the company, had abandoned the mine long enough to have it denounced.

(Answer objected to for same reasons as answer 14, and for further reason that it is not responsive.)

34th Ques.—During these proceedings of Hawes, did you or did you not at any time see Hawes and Walkinshaw together in your office on any business connected with the suit against Forbes pending, or any other matter in which Hawes was acting as the attorney of Walkinshaw?

(Question objected to for same reasons as preceding question.)

34th Ans.—I saw him there frequently talking with Mr. Walkinshaw during the pendency of this suit and the denouncement. I do not remember of ever seeing him in the office when the subject matter of the denouncement was before the court or Alcalde.

35th Ques.—After the institution of the proceedings and denounce-

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ment, did there appear to be any difference in the deportment of Walkinshaw towards Mr. Hawes, and what seemed the character of their relations towards one and other?

(Question objected to for same reasons as preceding question.)

35th Ans.—I saw no difference in their deportment, and their relations seemed to be the same as they were before.

Exhibits marked H. H. No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, now filed and offered in evidence, and objected to for reasons to be found at the end of the deposition.

Ques. 36.—Please state what papers these are, if you know; of what papers they are copies; whether they are true and exact copies; whether you know the signatures on the originals from which they are copied, and whether those signatures are genuine.

36th Ans.—All these papers, from No. 1 to 13 inclusive, are true and exact copies which I myself compared with the originals, now in the office of the County Clerk of Santa Clara County, and the signatures are all genuine. Those pencil marks appearing on said copies, do not belong to the copies, but were put there as memorandums for myself.

37th Ques.—During the pendency of the suit of Walkinshaw against Forbes, and of the proceedings of Horace Hawes in denouncements, was there offered in evidenee or exhibited to you, any document purporting to be a record of the original denouncement of the New Almaden mine, and of possession of said mine, given by any Alcalde in the year 1845?

(Question objected to for same reasons as 14th question.)

37th Ans.—There was none that I know of. I should have remembered it if I had seen it.

38tb Ques.—Look at the paper now shown you, which is the same which was yesterday in your presence produced by G. M. Yoëll, Deputy Recorder of the County of Santa Clara, then under examination, and which the said Yoëll testified was a paper now on file among the records in the office of the Recorder of said County, which paper is endorsed, "Posesion de la mina de Sta. Clara, Año de 1845," and say whether this paper was offered in evidence in either the aforesaid suit of Walkinshaw against Forbes, or the denouncement by Horace Hawes of which you have spoken, or was exhibited to you or seen by you at any time during the said proceedings, or either of them.

(Question objected to for same reasons as 14th question.)

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38th Ans.—I think not. I do not remember to have ever seen this paper until a short time since. It was shown me in the Recorder's office of Santa Clara County.

39th Ques.—What opportunities have you ever had for making yourself familiar with the records and papers, books and documents, contained in the office of the First Alcalde of the Pueblo of San José, and of obtaining a clear knowledge of what papers were there recorded, filed or kept?

(Question objected to for same reasons as 14th question.)

39th Ans.—I was clerk for Judge May both as Alcalde and Judge of the First Instance, and had the custody of all the books and papers in the office, and did the recording. After the resignation of Judge May, which took place some time in November, 1849, and the appointment of J. C. Conroy as First Alcalde and Judge Richardson as Judge of the First Instance, I continued to do most of the recording, and had access to the papers and books, and had the custody, in a manner, of said papers and books, until some time in April, 1850, when the state government went into operation. At that time I took all the records, of every description, and the books and the papers belonging to all the suits in the court of the First Instance, and carried them to my office as County Clerk, and delivered such of those as I thought properly belonged to the County Recorder's office, to John T. Richardson, the then County Recorder.

40th Ques.—During all this time of which you have just spoken, and all your connection with the records of which you have just spoken, did you ever see among them, or in any of the offices of which you have spoken, or anywhere else, the paper described in the 38th quesas "Posesion de la mina, &c."?

(Question objected to for same reasons as 14th question.)

40th Ans.—I do not recollect of ever having seen it until a short time ago in the Recorder's office.

41st Ques.—In view of the suit between Walkinshaw and Forbes, and the denouncement by Horace Hawes, and the general interest felt on the subject of the mine of New Almaden, if you had seen such a paper would you not have remembered it?

(Question objected to for same reasons as 14th question.)

41st Ans.—I think I should have remembered it had I seen it at the time, owing to the suits then pending, but not from the general interest taken, for there seemed none except by the contending parties.

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42d Ques.—Do I understand you to say that there was no general interest in and about San José felt on the subject of the mine of New Almaden, in the Fall of 1849?

42d Ans.—I think there was no general interest felt except by the contending parties.

43d Ques.—When you made the division and separation of the records of the Alcalde and Judge of the First Instance among the proper offices, in April, 1850, was it not necessary to examine all the documents carefully?

43d Ans.—I thought so, and so acted to the best of my ability.

44th Ques.—Paper marked "Exhibit R, No. 9," was here shown to the witness and he was asked to state what the paper is.

(Question objected to for the reason that the paper will show for itself, and the evidence sought is incompetent and immaterial.)

44th Ans.—This paper is a true and correct copy, compared by myself, of a record in Book No. 2, which was kept in the Alcalde's office, and removed by me to the County Recorder's office of Santa Clara.

(The objection to the filing of this paper will be found at the end of the deposition.)

(The paper marked "Exhibit R, No. 9," now filed and offered in evidence by the counsel for the U. S.)

CROSS-EXAMINATION.

45th Ques.—State the whole time you were in any way connected with the archives of Santa Clara County, or the District of San José.

45th Ans.—I went in the office of tne Alcalde and Judge of the First Instance of the District of San José, about the 1st of October, 1849, and continued there until April, 1850, when the state government went into operation, when I was elected County Clerk, and had nothing farther to do with the records, farther than the judicial part of them.

46th Ques.—During this period state what were the extent, number and condition of the archives.

46th Ans.—I cannot state the number of the papers, but there were quite a number of them, and in a very bad condition, thrown about loosely. I could not read Spanish at that time, and cannot state the various papers. The papers were kept in a press about four or five feet wide, by six feet in height, and about eighteen inches deep.

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47th Ques.—Do I understand you to say that during the whole of this period you could not read the Spanish language?

47th Ans.—Yes.

48th Ques.—Did you make yourself acquainted with the titles or contents of the documents in the Spanish language in the archives?

48th Ans. I had an interpreter to look over them and to inform me what papers were to go to the office I was taking them to, and through him I became partially acquainted with the contents and nature of the papers.

49th Ques.—Did you yourself personally or otherwise examine the Spanish documents previous to this preparation for removal in April, 1850, when you say you had an interpreter examining them?

49th Ans.—I did not thoroughly; partially so.

50th Ques.—Did the interpreter, in dividing the papers to go to the different offices, make a memorandum of the individual documents, or call them off separately to you, or did he make a general division, putting in one class the judicial documents, and in the other the documents belonging to the County Recorder's office?

5th Ans.—I requested him to look over and see what papers related to suits in the Court of the First Instance, and what deeds and mortgages there was there, and he did so, but made no memorandum that I know of. I think he called them off individually. I carried over nothing but what belonged to the Court of the First Instance and some deeds. The rest of the papers belonged to the office of the mayor, and were left in charge of the mayor.

51st Ques.—Were there not some papers in Spanish which were transferred to the County Recorder's office, which were not called off to you, and which you did not personally examine?

51st Ans.—There was not. I examined every one that was taken to the Recorder's office.

52d Ques.—Is your recollectian at this time of the Spanish documents in the archives sufficient to enable you to identify every paper that was there before they were removed from the archives?

52d Ans.—It is not.

53d. Ques.—Might there not have been documents called over to you and transferred to the Recorder's office which now being shown you would not recollect?

53d Ans.—I think not, for I feel confident that no Spanish documents went to the Recorder's office at that time. There might have been documents called over that remained in the office which I do not now recollect.

54th Ques.—Were all those Spanish papers which, at the time of this separation, were not transferred and left in the office, called over to you?

54th Ans.—I could not say whether they were all called over or

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not. Probably they were not, because there were a good many letters and other papers of no value, as I supposed.

55th Ques.—In this examination of papers was it not your sole object to get the papers relating to suits to go to the County Clerk's office, and deeds and mortgages to go to the County Recorder's office, and to leave all the balance, whatever that balance might be?

55th Ans.—It was; so far as the Recorder's office was concerned, I was not so particular except so far as those I had recorded myself.

56th Ques.—After this separation did you ever examine the documents and papers left in the Mayor's office?

56th Ans.—I never did.

57th Ques.—Did you at that time know particularly the individual papers making up the balance left behind?

57th Ans.—I did not.

58th Ques.—Might not the document referred to in question 38 have been in the Archives and left with the balance in the Mayor's office and you not have known it?

58th Ans.—It is very possible.

DIRECT RESUMED.

59th Ques.—Did you know a man by the name of Dolores Pacheco? if you did, is he dead or alive? Do you know his hand writing and signature well? if you did, in what manner did he sign his name—as Dolores Pecheco or Pacheco alone? At what time was he Alcalde?

59th Ans.—I knew Dolores Pacheco; he is dead; I know his hand writing and signature; he signed his name Dolores Pacheco; I never knew him to sign Pacheco alone. I do not know of my own knowledge when he was Alcalde; the records do not say. I have heard him say that he was Alcalde in 1845, and possibly heard him say in 1846 also.

60th Ques.—Is that his signature on the margin of the paper *Posesion de la mina*, &c., the same referred to in question 38, and which you have now before you?

60th Ans.—The formation of the letters are very similar to his signature, but the signature is in a better hand than his, and this is the only instance that I have seen it signed without "Dolores."

61st Ques.—During the suit of Walkinshaw and Forbes and the denouncement by Horace Hawes, of which you have testified, or at any time before the division of the archives of which you have also testified, did you ever hear Forbes or Walkinshaw say that there was any record of the denouncement and possession of the mine of New Almaden among the archives in your charge? Did they never ask you to search for such record amongst such archives, or ask your permission to search there for it themselves?

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61st Ans.—I do not think that they ever did. I think they never asked me to search, or asked permission to search for them.

(The counsel for claimant objects to questions 59 and 60 as introducing new matter not called for by the cross examination, and objects to question 61 as leading to hearsay evidence and therefore immaterial and incompetent.

52d Ques.—Where was the press which contained the archives before the removal kept?

62d Ans.—In the Alcalde's room where I had my office.

(The questions relative to the character or contents of the papers shown to the witness and marked respectively Exhibits R., No. 3; R. No. 4; R., No. 5; R., No. 6; R., No. 7; and R., No. 8, were objected to by attorney for claimant, as they were put, and the answers objected to as they were given, on the grounds that the papers must explain themselves and that the evidence is incompetent, irrelevant and immaterial. The questions thus objected are from numbers four to twelve inclusive.)

(The papers attached as Exhibits and numbered respectively Exhibit R., No. 3; R., No. 4; R., No. 5; R., No. 6; R., No. 7; and R., No. 8, were severally objected to by attorney for claimant, as they were offered, on the ground that they were not properly proven, and for the further reason that each and all of them are incompetent, irrelevant, immaterial and impertinent to the issue.)

(The Exhibits marked respectively H. H., No. 1 to No. 13 inclusive and also Exhibit R. No. 9, were severally objected to by attorney for claimant, as they were offered, because the originals were not produced nor duly proven; also because they are copies not duly certified nor proven; are secondary evidence, and incompetent, irrelevant and immaterial.)

H. C. MELONE.

Sworn to and subscribed before me this 19th day of August, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Filed, Aug. 29, 1857.

W. H. CHEVERS,
Deputy.

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EXHIBIT R. No. 3.

WALKINSHAW *vs.* FORBES—PETITION.

To the Honorable Richard M. May, Judge of First Instance in and for the District of San José :

Ths Petition of Robert Walkinshaw of said District respectfully showeth unto your Honor that he is and has been from the month of April 1847 hitherto in lawful possession of the Quicksilver mine situated in said District known by the name of New Almaden, and that by title derived under the original act of registry he is the owner of one-eighth part thereof.

That while so in possession by virtue of his own right and interest and and the consent and agreement of all parties interested, there has been extracted by him and under his direction a large quanty of valuable ore which still lies at the mouth of the said mine with the exception of such parts and parcels thereof as have been unlawfully carried away as hereinafter mentioned, and a portion which has been beneficiated by your petitioner.

And your Petitioner further showeth that James Alexander Forbes without licence from your petitioner but contrary to his express prohibition has unlawfully seized and carry away a large quantity of the said ores and still threatens to repeat the said trespass and to interrupt and disturb your Petitioner in the possession of said property without any right to do so, and without due and legal process, and that your petitioner justly fears that without a restraining order in this behalf great and irreparable injury will result to your Petitioner.

Wherefore your Petitioner, alledging that as against the said James Alexander Forbes, he has the legal right to remain in peaceable possession of the said property, and that he ought not to be deprived thereof without the adjudication of the Competent tribunals, and inasmuch as the Courts of the Country are open to the said Forbes, prays that your Honor will cause the said James Alexander Forbes to appear at a certain day to answer this Petition, and that in the meantime he may be restrained and required to desist from the Commission of the unlawful acts aforesaid, and that such other and further relief may be granted in the premises as may be just & lawful.

ROBERT WALKINSHAW.

Oct. 18th, 1849.

TERRITORY OF CALIFORNIA, } ss.
DISTRICT OF SAN JOSE. }

Robert Walkinshaw being duly sworn says that the facts set forth

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in the foregoing Petition are true to the best of his knowledge and belief.

ROBERT WALKINSHAW.

Sworn and subscribed before me Oct. 18th, 1849.

R. M. MAY,
1st Alcalde of Dis. Jan José.

Endorsed:
Filed, Oct. 18th, 1849, at 1-2 past 12 o'clock, M.

EXHIBIT R., No. 4.

WALKINSHAW *vs.* FORBES—CITATION.

TERRITORY OF CALIFORNIA, DISTRICT OF SAN JOSÉ. } ss.

Robert Walkinshaw having by petition verefied by oath represented to the undersigned Judge of first Instance in and for the said District that he is and has been since the month of April 1847 hitherto in lawful and peaceable possession of the Quicksilver mine situated in said District known by the name of New Almaden and that he still claims the right of possession and of a large quantity of ore upon the premises and having also made complaint that James Alexander Forbes is threatening to tresspass upon and illegally interrupt his possession and to take and carry away the said ore as he has actually done upon a former occasion praying that said J. A. Forbes may be cited to answer the complaint and that in the meantime he may be prohibited from the repetition of these unlawful acts Now therefore said Walkinshaw having entered into sufficient bond with good security to answer all damages that the said Forbes may sustain from the execution of this restraining order, it is ordered that the said James Alexander Forbes do appear before the undersigned Judge of the First Instance of the said District at the Juzgada in the Pueblo de San José on the 6th day of November 1849 to answer the said complaint and that in the meantime the said James Alexander Forbes and all persons acting by his command do absolutely refrain and desist from interrupting or in any manner interfering with the possession of the said mine without licence of the said Walkinshaw, and from conveying away any part of said ores, or any property pertaining thereto or in any other manner tresspassing upon the property in the said Walkinshaw's possession, but this order is without prejudice to any legal right or remedies that the said

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James Alexander Forbes or other parties interested may think proper to insist upon or pursue before the proper Tribunal.

R. C. Keys Sheriff of said District is charged with the execution of this order. Given under my hand and seal at the Pueblo of San José in said District this 18th day of October 1849.

R. M. MAY, Judge 1st Instance.

Attest:
H. C. MELONE, Clerk. { L. S. }

Endorsed:
Executed this Citation by giving to J. A. Forbes, on the 20th of Oct. 1849 a true copy of within.

R. C. KEYES, Sheriff.

Fees, $1,75.

EXHIBIT R., No. 5.

WALKINSHAW *vs.* FORBES—BOND.

Know all men by these presents that We Robert Walkinshaw and Antonio Gamies are held and firmly bound unto James Alexander Forbes in the sum of Twenty-five thousand dollars conditioned to indemnify and make good to the said Forbes all and any injury damages and costs that may accrue and be adjudged to him to him in consequence of the issuing of a certain restraining order of this date by the Judge of First Instance of the District of San José on said Walkinshaw's application prohibing the said Forbes from trespassing upon the mine called New Almaden and from carrying away the ores thereof till the further order of said Court of first Instance, in case the said Walkinshaw shall fail to sustain his said complaint.

Witness our hands and seals, Oct. 18, 1849.

ROBERT WALKINSHAW, [SEAL.]
ANTONIO DE GAMIEZ, [SEAL.]

Witness: Alcalde.

Interlineation in 8 & 9 & 11th line from top & erasure in 10th.

JOHN T. RICHARDSON.
HORACE HAWES.

Endorsed:
Filed 18th Oct., 1849.

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EXHIBIT R., No. 6.

To James Alexander Forbes:

Sir:—You will please take notice that on the twentieth day of October 1849 at the hour of 10 A. M., I shall apply to the Juzgado of the pueblo of San José to Richard M. May Judge of the First Instance in the District of San José Upper California to supersede and annul a certain order issued by K. H. Dimmick 1st Alcalde dated the 8th day of August 1849 requiring all persons having possession of the mine of New Almaden and its appurtenances, to deliver the same to James Alexander Forbes; on account of the illegality of the same.

Your ob't s't,

ROBERT WALKINSHAW.

San José, Oct. 19, 1849.

Endorsed:

Executed this notice by delivering a copy of it with J. A. Forbes, on the 20th of Oct. 1849, at 6 o'clock.

R. C. KEYES, Sheriff.

["R. No. 7."]

In the Court of 1st Instance,
Pueblo de San Jose, *R. M. May, Judge.*

Robert Walkinshaw,
vs.
Jas. Alex. Forbes.

James Alexander Forbes, Defendant in the above suit, being duly sworn, deposes and says:

That the allegations in plaintiff's petition and affidavit that he (Plff) is and has been in peaceable possession of the mine and ores of New Almaden, since the month of April 1847, and that affiant is threatening illegally to interrupt his said possession, are wholly false.

That, true it is that, in the said month, the Plaintiff took possession of the said mine by virtue of a power of attorney given him as agent by Alexander Forbes of the city of Tepic, Mexico, the principal owner and sole "Habilitador" or authorised contractor for the working of the said mine, and that the said Plaintiff, by virtue alone of the said power, continued to work the said mine as the agent of the said Alex. Forbes and his name, until the month of August, 1849.

That, on April 23d 1849, the said Alexander Forbes, by public

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and notarial act passed at the said city of Tepic, revoked all authority previously given to the Plaintiff, as his attorney in fact, to work the said mine; & empowered affiant as his agent, to take possession of, administer and elaborate the same. That, on the arrival of affiant, about August 10th 1849, he exhibited the said notarial act & power to the Plaintiff in the presence of K. H. Dimmick, Esq., (now at San Francisco) and the Plaintiff acknowledged the same to be correct, and that said Alex. Forbes had full power to execute the same; and that the Plaintiff thereupon or immediately after, in acknowledgment of the revocation of his powers, voluntarily, and peaceably delivered to affiant the full, legal, and actual possession of said mine and its appurtenances.

That this affiant, by virtue of the power of attorney aforesaid, remained in peaceable, public and uninterrupted possession of the said mine and appurtenances, and continued working the same with the knowledge and consent of the Plaintiff, until Sept. 25th 1849, when the said plaintiff, without any notice or citation whatever to this affiant, obtained an order from the Court of 1st Instance of San Jose declaring him, the said Plaintiff, to be the legal possessor of the said mine, and ordering this affiant to refrain from interfering with the possession thereof without license from the said Plaintiff. That affiant protested against the proceeding as unjust and *ex parte*; whereupon, on Oct. 8th 1849, the said Court, without any notice to affiant, issued another order commanding the sheriff to remove this affiant and the persons in his employment from the said mine, and to arrest this affiant. That this affiant being thus forcibly and illegally ousted from his possession, presented a petition to Peter H. Burnet, President of the Superior Tribunal, praying that the said illegal orders should be suspended, and affiant placed in his former possession; whereupon the said Burnett ordered the R. M. May, judge of 1st Instance, to place this affiant in his former posession of the said mine, ores &c.; and that the case should remain in this situation, that is, that affiant shoud have full and peaceable possession thereof as formerly, until the appeal taken by affiant from the said illegal orders should be decided by the court above. That the said R. M. May, issued his order, on the 19th day of October, commanding the sheriff to place affiant in possession, in accordance with the said order; but that, on the 18th, and, as affiant is informed, on the 20th of Oct., the said May issued a counter order, in direct disobedience and entire reversal of the order of Judge Burnet, whereby he again recognised the said Walkinshaw as the actual possessor of the said mine and appurtenances, and ordered this affiant, without citation, notice, or hearing whatever, to refrain from interfering with the said mines without the license of the said Waikinshaw, until the final decision of this suit; thereby changing and reversing a situation ordered to remain the

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same by Judge Burnet, until the decision of the appeal. That this suit is between the same parties, brought upon the same allegations, contemplates the same object, and is accompanied by the same order, as that upon which the two first orders were issued and countermanded by Judge Burnet, and which is now pending in the superior court on the appeal of this affiant.

And now affiant deposes that himself as part owner, and the parties for whom he is the legal agent, will suffer great and irreparable injury if these illegal and *ex parte* proceedings be continued. That Horace Hawes, the attorney of the said Walkinshaw in this and the aforesaid suits, and pretending to act therein for the interest of his client, denounced the said mine in his own proper name on Oct. 6th, 1849; thus seeking not only to deprive this affiant and those to whom he is responsible as agent of all right and title thereto, but apparently striving to divest his own client, Walkenshaw, of his entire right of ownership therein. That this denouncement by said Hawes, made with the knowledge and connivance of his client, who now owns but two shares in the said mine, and accompanied by statements the most false and proceedings the most arbitrary, has induced this affiant to believe that a fraudulent conspiracy exists between the said Hawes and Walkinshaw, with others, to deprive this affiant and those for whom he is acting as agent of their just rights of ownership in and to the said mines; and that it is to effect this fraud and conspiracy that the said Walkinshaw and his attorney are attempting to oust this affiant in this arbitrary and illegal manner. Of the truth of all which this affiant most solemnly swears.

And affiant further deposes and says that the bond given by the Plaintiff, and which pretends to secure this affiant against all damage, is wholly insufficient. That it is signed by, as affiant believes, an irresponsible foreigner who is not and does not claim to be a citizen of the United States, who has no property, as affiant believes, sufficient to secure the amount of the bond. Nor does this affiant believe his principal to possess that solvency necessary to secure him against the probable injury resulting from the order aforesaid.

JAS. ALEX. FORBES.

Sworn to and subscribed before me, this 20th day of October 1849, at San José.

H. C. MELONE,
Clerk of Court First Instance.

Filed Oct. 22d, 1849.

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[R. No. 8.]

To the Hon. Peter H. Burnett Chief Justice of the Superior Tribunal in and for the territory of California in vacation.

The petition of James Alexander Forbes of the Mission of Santa Clara in the District of San José respectfully sheweth: That in pursuance of the authority delegated to your Petitioner by Alexander Forbes of Tepic Mexico principal owner and manager of the mine hereafter mentioned your petioner on the 10th day of August last received from Robert Walkinshaw (former agent appointed by the said Alexander Forbes) possession of the quicksilver mine known by the name of New Almaden in the District of San José & of the ores & other property thereof, & that on the thirteenth day of said month of August the keys of the buildings attached to the mine were delivered over to your Petitioner's Clerk by said Walkinshaw except the key of a certain dwelling house thereon in which the family of said Walkinshaw resided and which your Petitioner authorised him temporarily to retain possession.

That from the said 13th day of August until the time when your Petitioner and his servants were dispossessed of said mine and ores under the orders of Judge May copies of which are hereunto annexed your Petitioner was in the full free and unterrupted possession of the said mine & ores and exercised exclusive control over the same.

That on the 26th day of September last your petitioner received a copy of a certain peremptory order issued by Judge May of which order a copy is hereto annexed marked B.

That no copy of the petition on which the same was granted was ever served on your petitioner nor any notice given to him of the application for such order.

That your Petitioner thereupondrew up and presented a protest complaining of the *ex parte* character of the proceeding and the injustice of the order & exhibited to Judge May his authority as agent.

That your Petitioner in the belief that he had done all that was requisite in the matter and that the order aforesaid was illegal and void for want of notice continued in the prosecution of his business until the issuing of the second order a copy of which is hereunto annexed marked D, which was also issued without any notice of an application therefor being given to your Petitioner.

That a copy of the second order was received by your Petitioner on the 8th day of October inst. and he thereupon by his Counsel on the 10th and 11th days of October inst. applied to Judge May on the affidavits marked E & F to set aside the said orders & the proceedings thereon, & that after hearing Counsel for and against the application it was denied.

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Your Petitioner further avers that no bond or security was required or taken from the said Walkinshaw on granting either of the *ex parte* orders hereinbefore mentioned.

That copies of the affidavits petitions orders & returns of the Sheriff before Judge May are hereto annexed & petitioner prays may be taken as a part of this petition.

That your Petitioner on the 15th day of October inst upon notice to the opposite party applied to said Judge May to grant an appeal to the Superior Tribunal from the said two orders and to suspend and supersede all proceedings under them until the decision of such appeal, & offered to give any security that might be required, which application was granted as to the appeal but denied as to the other relief asked for.

And your Petitioner further sheweth that great & irreparable injury will be sustained as well by your Petitioner as by the other persons interested in said mine should such orders be continued in force; & that said Walkinshaw has no right to the possession of the said mine or of the ores thereof. And further that your Petitioner is a part owner of said mine and ores.

Your Petitioner therefore prays your Honor to suspend and supersede all proceedings under the said orders and for such further or such other relief as to your Honor may see fit.

And your Petitioner will ever pray, &c.

JAS. ALEX. FORBES.

Lob. Cal.
Dist San José, '49. } ss.

Sworn and subscribed to before me the 15th Oct. 1849.

R. M. MAY,
1st Dist Alcalde San José.

[A.]

To the Honorable Richard M. May first Alcalde and Judge of first Instance in and for the District of San José.

The petition of Robert Walkinshaw of said District respectfully sheweth unto your Honor that he is and has been from the month of April 1847 hitherto in the lawful possession of the Quicksilver mine known as New Almaden situated in said District of San José that while he has been so in possession by virtue of his own right and interest and the consent and agreement of all other parties interested therein there has been extracted from the said mine a large quantity of valuable ore under his direction, which still remains lying at the mouth of the said mine with the exception of such parts and parcels

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thereof as have been unlawfully carried away as hereinafter mentioned and a portion which has been beneficiated on the premises by your petitioner.

And your petitioner further showeth unto your Honor that James Alexander Forbes of said District, without license from your Petitioner and contrary to his expressed prohibition, and as your Petitioner believes without any legal right or authority is attempting to interrupt your Petitioner in the possession of the said mine and ores and is now in the act by means of servants in his employ and under his orders of taking and carrying away the said ore and without the due and legal process prescribed by the constitution of the United States but by force and violence depriving your said Petitioner of his property and possession. Wherefore your petitioner alledges that as against the said James Alexander Forbes he has the legal right to retain possession of the said property and that he ought not to be deprived of his rights without the adjudication of the competent courts therein and inasmuch as the said Courts are open to the said James Alexander Forbes if he will submit himself to their judgment prays that your honor will grant a peremptory order commanding and requiring him and all other persons trespassing as aforesaid upon the premises to desist from so doing & from taking or carrying away any ores or other property therefrom leaving the said James Alexander Forbes to institute and prosecute such legal proceedings as he may think proper and without prejudice to the rights of any parties interested who may seek redress in the manner prescribed by law.

And your Petitioner as in duty bound will ever pray.

ROBERT WALKINSHAW.

TERRITORY OF CALIFORNIA,
DISTRICT OF SAN JOSE.

Robert Walkinshaw being duly sworn deposeth and saith that the facts set forth in the foregoing petition are true to the best of his knowledge & belief.

ROBERT WALKINSHAW.

Sworn and subscribed before me Sept. 25, 1849.

R. M. MAY,
Judge of first Instance & Alcalde of San José.

[B.]

TERRITORY OF CALIFORNIA,
DISTRICT OF SAN JOSE.

Robert Walkinshaw having by petition verified by oath represented to the undersigned first Alcalde & Judge af first Instance in and for

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said District that he is and has been since the month of April 1847 hitherto in lawful and peaceable possession of the Quicksilver mine situated in said District known by the name of New Almaden and that he still claims the right of possession thereunto and of a large quantity of ore upon the premises, and having also made complaint that James Alexander Forbes is trespassing upon and attempting illegally to interrupt his possession and to take and carry away the said ores praying a prohibition in this behalf against the said Forbes and all other persons acting under his order. It is therefore ordered that the said James Alexander Forbes and all persons acting under his command do absolutely desist from interrupting or in any manner entering upon the possession of the said mine without licence of the said Robert Walkinshaw and from carrying away any part of the said ores or other property pertaining thereto or in any other manner trespassing upon the property in said Walkinshaw's possession, but this order is without prejudice to any legal rights or remedies that the said James Alexander Forbes or other parties interested may think proper to insist upon or pursue before the proper Tribunal.

R. C. Keyes Sheriff of said District is charged with the execution of this order.

Given under my hand and seal at the Pueblo of San José in said District this 25th day of Sept. A. D. 1849.

R. M. MAY,
Judge of first Instance & Alcalde of San José.

Attest:
C. T. RYLAND.
JAMES W. WEEKES.

(SHERIFF'S RETURN.)

Executed this order by leaving a correct copy thereof with the wife of the said James Alexander Forbes the defendant in the Mission of Santa Clara this 26th day of September Anno Domini 1849.

R. C. KEYS,
Sheriff,
By J. T. RICHARDSON,
D. S.

Executed this order by reading & explaining to the men in the employ of James A. Forbes they refused this 8th day of October 1849.

R. C. KEYES,
Sheriff.

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[C.]

To the Honorable Richard M. May first Alcalde and Judge of first Instance for the District of San José.

The petition of Robert Walkinshaw respectfully sheweth that on the 25th instant your Honor on application on oath of this petitioner issued a peremptory order to James Alexr Forbes and all persons acting by his command absolutely to desist from interrupting or in any manner entering upon the possession of the mine of New Almaden without licence of the petitioner and from carrying away any part of ore lying at the mouth of said mine. That notwithstanding that said peremptory order was formally intimated to the said James A. Forbes and his servants acting under his orders on the morning of the 26th inst. and was moreover on the same day intimated to him by a copy of said order being served on him by the officer of Court at his dwelling house he the said James A. Forbes continues and persists in retaining his illegal possession of said mine and in removing therefrom said ore with greater activity even than heretofore having actually removed subsequent to the intimation of said peremptory order, 36 mules load and that in utter disregard and contempt of your Honor's said order.

Wherefore your petitioner thus agrieved and deprived of the protection of his rights to be afforded him by his application and your Honor's order consequent thereon prays that you will immediately cause to be taken against the said James A. Forbes and all persons acting by his commands such legal compulsory measures as may be necessary to enforce due & instant obedience & observance of your Honor's said order.

And farther that you will ordain the said James A. Forbes to return to the month of the mine all the ore he has caused to be removed therefrom in defiance and contempt of your Honor's order aforesaid.

And your petitioner as in duty bound will ever pray.

ROBERT WALKINSHAW.

[D.]

TERRITORY OF CALIFORNIA,
DISTRICT OF SAN JOSE, } ss.

The annexed order having been disobeyed by James Alexander Forbes and those acting under his orders as appears by the return of the Sheriff verified by oath you are hereby commanded to put the

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same into full force and execution by removing from the premises the said James Alexander Forbes and all other persons whomsoever acting under his orders, and you are further commanded to arrest the said James Alexander Forbes and all other persons who shall further disobey or in any manner interfere with or hinder the execution of the said order, and bring them forthwith before me to be dealt with according to law.

Given under my hand this 9th Oct 1849.

R. M. MAY, 1st Alcalde.

Witnesses—JOHN T. RICHARDSON,
ISAAC BRANHAM.

Oct. 9th, 1849.—Executed in full excepting the arrest of J. A. Forbes.

R. C. KEYES, Sheriff.

[E.]

IN THE COURT OF FIRST INSTANCE IN THE DIST: OF SAN JOSE, IN THE TERRITORY OF CALIFORNIA.

ROBERT WALKINSHAW.
vs.
JAMES ALEX'R FORBES.

DIST. OF SAN JOSE, ss.

James Alex Forbes being duly sworn saith that as agent of Alex'r Forbes leading & managing member of the mining company of New Almaden he was placed by a competent or legal letter or power of attorney in the full possession of all the mining interest of said Company known and designated by the name of New Almaden on the 10th day of August 1849 by the former agent the said Robert Walkinshaw in the hearing and presence of Judge Dimmick now absent at Monterey as a member of the territorial convention and that the keys were in pursuance of the general possession aforesaid formally turned over to him or to his clerk on the 13th of said month by said Walkinshaw thereby recognizing the revocation of his own agency and the regular and legal appointment of your deponent as his successor.

Deponent further states that said Walkinshaw has within the last few days in contravention of his former voluntary act of surrender as aforesaid caused process to issue from this Court the effect of which has been to arrest the operatives or hands interrupt the business

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of the mine and create a state of confusion perplexity and loss to the great detriment of the parties interested and of this deponent.

Deponent further states that from the said tenth day of August last until the time of such last mentioned interference he has been in the full free and uninterrupted possession of the mine aforesaid & of the ores thereof without any claim disturbance or interference of the said Robert Walkinshaw or any other person.

Deponent further avers that Judge Dimmick now a member of the Territorial convention as aforesaid and absent at Monterey was present and a witness to the acknowledgement on the part of the said Walkinshaw of all the material facts (viz) the validity of the instrument giving to deponent legal right and authority to take possession & the management of the said mine and his the said Walkinshaw's voluntary surrender to him.

Deponent further saith that the loss arising from the continuance of the provisions and prohibitions contained in the orders heretofore made on the petitions of said Walkinshaw would be great & irreparable—and deponent expressly denies that at the time of the presentation of the first application said Walkinshaw was in the possession of the said mine and ores or either of them.

(Sd) JAS. ALEXR. FORBES.

Sworn before me this 10th day of October, 1849.

Sworn and subscribed to before me this 11th day of October, 1849.

(Sd) R. M. MAY, 1st Alcalde Dist. San José.

[F.]

IN THE COURT OF FIRST INSTANCE OF THE DISTRICT OF SAN JOSE.

ROBERT WALKINSHAW
vs.
JAMES ALEXR. FORBES & OTHERS.

DISTRICT OF SAN JOSE, ss.

Robert Birnie and Ferdinand Alden of the said District being duly and severally sworn do depose and say and each of them for himself doth depose and say, that he has been in the employment of the defendant in this cause at the New Almaden mine from the fourteenth day of August last up to the present time—that the said James Alexr Forbes has during the whole of that time held the exclusive possession

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of the said mine and of the ores thereof paying the workmen and exercising in all respects exclusive supervision management and control over the same—and that during the period aforesaid the said Robert Walkinshaw has not had possession of the said mine or of the ores thereof or any control over the same nor has he to the best of deponents' knowledge claimed or pretended to control govern own or possess the same or any of the ores thereof nor has he interfered in the management thereof.

(S[d]) ROBERT BIRNIE.
FERNANDO ALDEN.

Sworn before me this 10th day of October, 1849.

Jurado ante mi esta dia 10 de Octubre de 1849.

(S[d]). AGUSTIN DESFORGES,
Alcalde.

To Horace Hawes, Esq., Att'y for R. Walkinshaw.

Sir:—Please to take notice that on the 16th day of October inst. we shall move before the Hon. Peter H. Burnett Chief Justice of the Superior Tribunal at his chambers in the Pueblo de San José at the hour of 10 A. M. for an order to suspend and supercede the two orders granted on the petitions of Robert Walkinshaw within mentioned, until the decision of the appeal in the within matter. That such motion will be grounded on the fact that such orders were granted improperly and ex parte and will be based upon a petition of Jas. Alex. Forbes, of which the within is a copy and upon papers of which the within are copies.

Yours, &c.,
W. H. RUSSELL & A. CAMPBELL,
Att'ys for Jas. Forbes.

Oct. 15, 1849.

United States of America, } ss.
Territory of California. }

The foregoing application, based upon the foregoing papers, having been argued by counsel for both parties, before the undersigned, in vacation, on the 16th and 17th days of October, A. D., 1849; and the same having received an attentive consideration: It is therefore ordered, that the Court below cause all proceedings under the said two orders of the Court, to be superceded; and that the said Court,

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command the sheriff to place the said James Alexander Forbes in the same possession of the mine, ores, and other property belonging to said mine, as he, the said Forbes, had before the execution of the second order issued by the Court below; and that the case remain in this situation, until the same can be heard in the Court above. From which order the said Walkinshaw by his counsel prayed an appeal to the First Bench of the Superior Tribunal, which was refused by the Judge.

Given under my hand this 17th day of October, A. D., 1849.

PETER H. BURNETT,
President of the Superior Tribunal of California.

EXHIBIT R., No. 9.

APPOINTMENT—JAMES W. WEEKS TO CLEMENTE LAQUIN.

(TRACED COPY.)

{ JUZGADO DEL PUEBLO DE SAN JOSE
{ DE GUADALUPE.

De conformidad con el pedimento que antecede yo al infrascrito Alcalde 1ª. de este Jurisdiccion con dos testigos de asistencia a falta de Escribano publico pase hoy viente uno de Enero de mil ocho cientos curente y ocho, a la espresado Mina de Nuevo Almaden; que no huviendo facultativo del Districto nombre a Clemente Laquin Menero practica para examinar el estado de dicha minas lo que se hallo trabajado conforme a la ordenanza de mineria siendo forme las respaldos sus planes y obras en la mejor orden y tempios de tepatate u otra estorta, de manera que evita toda pelegro a los operarios; y a conservar la mina en buen estado. Y huviendo el citado perito practicado las medidas y demas operaciones nesesarias para determinar el rumbo y hechada de la veta a su actual profundidad declara ser dicha rumbo de Nor Oeste y Sud Este y su Echada ser Nordeste y que excede de varra por varra; esto es, que hace con el orizonte un angulo de mas de cuarenta y cinco grados: dando a los interesados derecho a la cuadra de dos cientos varras segun Titulo VIII Articulo 7, de la ordenanza. Y considerando que se trabaje esto mina compañia concedo tambien el derecho que se me pide de cuatro pertenencias seguidas sobre el rumbo de la espresado veta en los planes de la mina conforme a la ordenanza Titulo XI Artº. 2. Concedo ademas derecho a la mejara de Estacas con respeto a la variasion del rumbo de la veta Segun Titulo VIII Artº. 11 de la ordenanza y Esto en la orden siguiente:

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Es decir: desde la baca de la Mina cincuenta varras hacia el Sur Oeste y ciento cincuente varras acia el N.E y para la longitud de las cuatro perteniencias cien varras hacia el Sudeste y siete cientos varras hacia el Nor Oeste sobre el mismo rumbo de la veta siendo constante el derecho y titulo de la Mina a la gracia de terreno concedido en la original acto de posesion.

Practicadas estas delegencias, ordene el citado perito procediera imediatamento a sacar las espresadas medidas y fijar en los estremos de los cuartro perteniencias y en cada lado de la cuadra de dos cientas varras los Estacas conforme a la Ordenanza.

Todo lo cual se hizo en presencia mia y de los testigos de asistencia de lo que doy fe.

JAMES WEEKES,
Alcalde.

{ RECORDER'S OFFICE, SANTA CLARA COUNTY, CALIFORNIA, July 27th, A. D. 185[illegible].

I hereby certify that the forgoing, on pages 1 and 2 of this, contains a full, true, correct, and exact traced copy of an instrument now of record in this office, and recorded in Book 2 of Deeds, on pages 41 and 42.

{ SEAL } Witness my hand and official seal, at office, in the city of San José, the day and year last written.

S. A. CLARK,
County Recorder.
BY GEO. M. YÖELL,
Deputy.

EXHIBIT H. H., No. 1.

To the First Alcalde of the District of San José, Guadalupe:

Horace Hawes, native of the State of New York now residing at San Francisco, District of San Francisco California, being a citizen of the United States of America in full exercise of his rights appears before you as by law entitled and with all due formality as prescribed by the "Ordinancas de Mineria" (mining laws,) solemnly denounces for desertion the quicksilver mine situated in the said District of San José Guadalupe, and in the lands of the Rancho of José Reyes Berreyza, within this Jurisdiction known in its original title of registry as that of Santa Clara, and now by the name of New Almaden the same

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having been left by its possessors without having been worked for four consecutive months and by which act itself they lost all right to the to the said mine, as declared by Art. 13, Tit. 9, of said Ordinances of Mineria; of which mine so far as known, the last possessors were Andres Castillero a citizen of Mexico, Alexander Forbes a British subject, resident in the City of Tepic in the Republic of Mexico, James Alexander Forbes resident at Santa Clara within this jurisdiction, Robert Walkinshaw residing at the said mine, Theodore Robles and Segundo Robles natives of California residing in the neighborhood of the Mission of Santa Clara within this Jurisdiction, all and each of the said individuals according to the rights and interests they may have had in the possession of said mine respectively; all of whom may you be pleased to cause to be cited for their respective rights and interests aforesaid in conformity to Art. 8, Tit. 6, of said Ordinances, and on expiring the terms assigned and the publication of this denouncement, to proceed in the as prescribed by the said Ordinances, Art. and Tit. first above cited.

HORACE HAWES.

San Jose, 6 Oct., 1849.

Done in the presence of the undersigned First Alcalde, October 6th, 1849.

R. M. MAY, First Alcalde,
District San José.

Subscribing witnesses:
H. C. Melone,
John T. Richardson.

Pueblo de San Jose, Oct. 6th, 1849.

Being presented and admitted without prejudice to any third party who may exhibit a better right let notice be posted in the places accustomed for the purpose in this Jurisdiction and notices be given to the parties interested and after this shall be done the further decision will be pronounced. I the undersignad Alcalde of this Jurisdiction decide and order this to be done and sign with the assisting witnesses according to law.

R. M. MAY, 1st Alcalde
Of District San José.

Witnesses:
H. C. Melone,
James F. Reed.

Filed for record Oct. 10th, 1849.
Recorded in Book 5, pages 325 and 27 and 28.

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The cognizance of the foregoing proceedings pertaining to the Judge of first Instance and being received and admitted the undersigned will entertain the same in that capacity.

R. M. MAY, 1st Alcalde
And Judge of 1st Instance.

Oct. 22d, 1849.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA. } ss.

I John B. Hewson County Clerk and *ex officio* clerk of the District Court of the Third Judicial District of the State of California in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose, (in the present County of Santa Clara, aforesaid,) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes. The papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

In Testimony Whereof, I have hereunto set my hand, and affixed the Seal of said District Court this 24th day of July, A. D. 1857.

JOHN B. HEWSON,
Clerk.

{ SEAL }

EXHIBIT H. H., No. 2.

TERRITORY OF CALIFORNIA,
District of San José. } ss.

You are hereby cited to be and appear before the undersigned first Alcalde of the District of San José, at the Jusgada in the Pueblo of San José on the 22d day of October 1849 to answer to the denouncement for desertion of the Quicksilver mine, situated in said District, called New Almaden, which denouncement has been duly presented by Horace Hawes, conformably to Article thirteen in Title mine, and article eight, Title six of the Ordinances of Mineria, and admitted without prejudice, according to the said ordinances as of mineria, (mining laws.)

Given under my hand at the Pueblo of San José, this 10th day of October 1849 in presence of the witnesses who have subscribed their names hereunto.

By order of
R. M. MAY, 1st Alcalde.
H. C. MELONE, Clerk.

Witnesses: JOHN T. RICHARDSON,
Z. JONES.

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"ENDORSEMENTS."

I, Robert C. Keyes Sheriff or Commissario of the Court of First Instance of San Jose do certify and return that I delivered personally to James Alexander Forbes, Robert Walkenshaw, Segundino Robles, and to each of them individually and respectively a notice or citation directed to them respectively, of which the within is a true copy, ten days before the return day within mentioned, and that I had placed in my hands for service at the same time, the same citations for Alexander Forbes and Andres Castillero, but after the most diligent inquiry they (said A. Forbes and Castillero) could not be found and are reputed and believed to be at this time, and to reside out of the Territory of California, and that I sent the same notice to Theodore Robles by his brother Segundine.

Sworn before me, Oct. 26, 1849.

R. C. KEYES, Sheriff.

Sworn and subscribed to before me, this the 26th October, 1849.

R. M. MAY,
1st Alcalde, San José.

Fees of the Sheriff, $16 75.

STATE OF CALIFORNIA, }
County of Santa Clara. } ss.

I John B. Hewson County Clerk and *ex officio* clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San José (in the present County of Santa Clara aforesaid,) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Haws. The papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said District Court this 23d day of July, A. D. 1857.

[SEAL.]

JOHN B. HEWSON,
Clerk.

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EXHIBIT H. H. No. 3.

BEFORE THE FIRST ALCALDE OF THE DISTRICT OF SAN JOSÉ, GUADALUPE.

The answer of James Alexander Forbes of Santa Clara, and Alexander Forbes of Tepic, Mexico, by James Alexander Forbes his Attorney and Agent, to the denunciation of the mine known by the name of New Almaden in the District of San Jose filed by Horace Hawes.

These Respondents, saving and reserving to themselves the right of altering amending adding to and changing this their Answer to the aforesaid denunciation, and also specially excepting to the Jurisdiction of this Court and to the said denunciation by reason of the omission therein of the statement of any time when or persons by whom the said mine was left unworked, of the distinguishing land-marks of the place, and of the last occupants of the neighboring mines for answer thereto or to so much thereof as they are advised it is maintained to answer unto saith:

That the said Alexander Forbes is the owner of one-half part or 12 shares in the said mine and its appurtetances, and the said James Alex. Forbes is the owner of one twelfth part or two shares therein. That the said Alexander Forbes has a contract of habilitacion with the other owners of the same by virtue of which he is entitled to and for a long time past has exercised exclusive control and management over said mine through his agents and attorneys by him appointed and that the said James Alex. Forbes is his present managing agent and attorney in relation thereto. That the statement contained in the said denunciation that the said mine has not been worked for four consecutive months is untrue. That this Respondent, James Alex. Forbes by virtue of his agency received the possession of the said mine and its appurtenances about the tenth day of August last and worked the same with great industry and activity until the ninth day of October inst., when this respondent was forcibly ejected from the possession of said mine and its appurtenances under color of a certain *ex parte* order made by the Judge of first Instance, of the District of San Jose on the petition of Robert Walkinshaw for whom the said Horace Hawes acted as counsel and attorney, in said matter, which said order has since been appealed from and superceded.

These Respondents further aver that the said Horace Hawes has filed the said denouncement in bad faith and that he has unjustly conspired with Robert Walkinshaw therein named and who is a shareholder in the said mine for the purpose of defrauding the other shareholders of their interest in said mine and of obtaining possession and

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control over the same. That in order to accomplish the object of such conspiracy the said Robert Walkinshaw falsely and fraudulently pretending to be in actual possession of the same has through the instrumentality aid and connivance of the said Hawes applied for and obtained against this Respondent, James Alex'r. Forbes repeated *ex parte* orders from said Judge May, for the delivery of possession of said mine to said Walkinshaw. That the said Hawes is thus ostensibly engaged on the one hand in vindicating the pretended claims of the said Walkinshaw to the said mine and on the other in endeavoring to subvert defeat, and annul any right or interest he claims therein.

And these respondents aver that for two years and upwards immediately prior to the 10th day of August last the said Walkinshaw had charge of the said mine the ores and other property thereof, and that if there was any neglect in regard to the working thereof it was the neglect of said Walkinshaw who is now conspiring with said Hawes to profit thereby to the great injury of these respondents and of the other persons interested in said mine.

JAS. ALEX. FORBES, in person.
ALEX. FORBES,
By his Agent and Attorney, Jas. Alex. Forbes.

Filed, Oct. 22d, 1849.

STATE OF CALIFORNIA, }
County of Santa Clara. }

I, Jno. B. Hewson County Clerk and *ex officio* clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose, (in the present county of Santa Clara, aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes, the papers and records of said Alcalde's Court being now in my possession as Clerk of the afaresaid District Court.

SEAL.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said District Court, this 12th day of Augnst, A. D. 1857.

JOHN B. HEWSON, Clerk.

By LEVI P. PECK, Deputy.

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EXHIBIT H. H., No. 4.

TERRITORY OF CALIFORNIA,
District of San Jose. } ss.

To James Alexander Forbes and Alexander Forbes: You are hereby notified that I shall attend at the Jusgada in the Pueblo de San Jose on the 12th instant for the purpose of hearing proof concerning the denouncement by Horace Hawes of the Quicksilver Mine called New Almaden situated in said District of San Jose, when and where you can attend if you wish to do so.

Given under my hand this 3d day of November, 1849.

JOHN T. RICHARDSON,
Judge of First Instance.

Attest: H. C. MELONE, Clerk.

Delivered a true copy of the within James A. Forbes on this day 8th Novcmber 1849.

H. C. MELONE.

STATE OF CALIFORNIA,
Country of Santa Clara. } ss.

I Jno. B. Hewson County Clerk and *ex officio* clerk of the District Court of the Third Judicial District of the State of California in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose (in the present County of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver mines for desertion, by Horace Hawes, the papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

(SEAL.) In Testimony Whereof I have hereunto set my hand, and affixed the Seal of said District Court this 12th day of August, A. D. 1857.

JOHN B. HEWSON, Clerk.
By LEVI P. PECK, Deputy.

EXHIBIT H. H. No. 5.

To the Judge of First Instance of the District of San Jose:

IN THE MATTER OF THE DENOUNCEMENT OF THE MINE OF NEW ALMADEN.

Horace Hawes the Denouncer of said Mine, represents to your Honor, that on yesterday was completed the publication of the notices

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to absent owners, as required by the mining laws and that one of those who lives within the district has appeared and put in his answer. Furthermore that the said Hawes has been prevented until to-day from being present within this District, in the first place by sickness, and also by the most urgent and necessary public business, he being the Prefect of the District of San Francisco. May it please your Honor therefore to postpone and fix the day for taking the proofs in this case until Monday the 26th day of November instant to be continued from day to day as long as may be necessary.

To the truth of which facts as above stated and that his application is not made from malice, your petitioner solemnly swears to the best of his knowledge.

HORACE HAWES.

San Jose Nov. 12th, 1849.
Filed 12th Nov., 1849.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Jno. B. Hewson, County Clerk and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcaldes Court for the District of San Jose (in the present County of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes.

The papers and records of said Alcaldes Court being now in my possession, as clerk of the aforesaid District Court.

SEAL. In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court, this 23d day of July, A. D., 1857.

JNO. B. HEWSON, Clerk.
BY LEVI P. PECK, Deputy.

EXHIBIT H. H. No. 6.

COURT OF FIRST INSTANCE,
PUEBLO DE SAN JOSE.

HORACE HAWES: IN THE MATTER OF THE DENOUNCEMENT OF THE MINE OF NEW ALMADEN.

Jas. Alex. Forbes, in his own name and in that of the other Stockholders of said mine comes into Court and, in addition to the answer

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and exceptions filed in said suit, more especially excepts, that this Court has no jurisdiction to try the said cause either as 1st Alcalde or Court of First Instance, *ratione materiae.*

Wherefore he prays that the same may be dismissed, and for general relief &c.

J. M. JONES,
Att'y for Defendants.

Filed Nov. 12th, 1849.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I Jno. B. Hewson, County Clerk, and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcaldes Court for the District of San José (in the present County of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes. The papers and records of said Alcaldes Court being now in my possession as Clerk of the aforesaid District Court.

{ SEAL } In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court, this 23d day of July, A. D., 1857.

JNO. B. HEWSON, Clerk.
BY LEVI P. PECK, Deputy.

EXHIBIT H. H. No. 7.

HORACE HAWES
vs.
JAMES A. FORBES AND OTHERS.

November 12th, 1849.

R. C. Keyes sworn on the part of James A. Forbes states that he believes the value of the mine of New Almaden greatly exceeds one hundred thousand dollars.

Robert Birnie sworn, states that he believes the value of the mine of New Almaden to be over one million of dollars.

ROBERT BIRNIE.

Subscribed and sworn to before me 12th Nov., 1849.
H. C. MELONE, Clerk Court first Instance.

Filed 12th Nov., 1849.

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STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I Jno. B. Hewson County Clerk, and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcaldes Court for the District of San Jose (in the present County of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes: The papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

{ SEAL } In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court, this 23d day of July, A. D., 1857.

JNO. B. HEWSON, Clerk.
BY LEVI P. PECK, Deputy.

EXHIBIT H. H. No. 8.

I, H. C. Melone, Clerk of the Court of First Instance in and for the District of San José, do certify, that notices or Edicts of which the within and annexed marked A. and B. are true copies written in English and Spanish, and signed by the Judge of First Instance and Clerk of said Court, were conspicuously posted upon the doors of the Catholic Churches in the Pueblo of San Jose and Mission of Santa Clara within said District on three successive Sundays, beginning on Sunday Oct. 28 1849, and ending Sunday Nov. 11th, 1849, each notice or Edict so posted and published having the corresponding number and date; and that the like notice in Spanish with one in English of which the annexed marked C is a true copy were conspicuously posted and affixed upon the door of the Juzgado or Court Room in the Pueblo of San Jose from the 27th day of October 1849, to the 12th day of November 1849, inclusive all of which is declared and certified upon oath.

H. C. MELONE.

Sworn and subscribed before me Nov. — 1849.
JAMES C. CONROY, First Alcalde
of San José.

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A.

NOTICE.

Juzgado of First Instance of the Pueblo of San José.

The undersigned Judge of First Instance makes known to the Public, that the Quicksilver mine situated in this Jurisdiction, known by the name of New Almaden, has been denounced for desertion, in order that all parties interested may appear and defend their rights, within the time prescribed by law.

This is the First Edict published this 28th day of Oct., 1849.

B.

ANUNCIO.

Juzgado de Primera Instancia de la ciudad de San José.

El Juez que subscribe, pone en conocimiento del publico, que la mina conocida por el Nuevo Almaden, ha sido denunciado, y aunque algunos de los poseedores han sido citados otros son ausentes y se les cita por Edictos para su comparecencia conforme manda la ordenanza vigente.

Es este Primer Edicto hoy 28 de Octubre de 1849.

C.

PROCLAMATION.

Juzgado of the District of San José.

PUEBLO OF SAN JOSE, Oct. 28d, 1849.

The Quicksilver mine situated in the District of San Jose known and designated in its original act of registry as that of Santa Clara, and now known by the name of New Almaden, has been denounced for desertion according to the ordinances of Mineria (Mining Laws.) Some of the parties have appeared, some have not. All persons interested are hereby warned to appear before the Judge of First Instance, to defend against the said denouncement, if they think proper so to do.

R. M. MAY, Judge First Instance.
H. C. MELONE, Clerk.

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STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, John B. Hewson, County Clerk, and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the First Alcalde's Court for the District of San José (in the present County of Santa Clara aforesaid,) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion by Horace Hawes. The papers and records of said Alcalde's Court, being now in my possession, as Clerk of the aforesaid District Court.

{ SEAL } In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court, this the 15th day of August, A. D., 1857.

JNO. B. HEWSON, Clerk.

EXHIBIT H. H. No. 9.

IN THE MATTER OF THE DENOUNCEMENT OF THE MINE OF NEW ALMADEN, BY HORACE HAWES.

The defendants in the above case excepted to the jurisdiction of the 1st Alcalde and Judge of 1st Instance because the ordinance of mines establishes a special and exclusive jurisdiction in another Court, and provides that in default of such Court the party shall go before the Court of the nearest Territory having such jurisdiction.

J. M. JONES,
Att'y for Defendants.

Filed 15th Nov., 1849.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I Jno. B. Hewson County Clerk and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose (in the present County of Santa Clara aforesaid,) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes. The papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District.

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{ SEAL } In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court this 23d day of July, A. D., 1857.

JNO. B. HEWSON, Clerk.
By LEVI P. PECK, Deputy.

EXHIBIT H. H., No. 10.

IN THE MATTER OF THE DENOUNCEMENT OF THE QUICKSILVER MINE CALLED NEW ALMADEN, SITUATED IN THE DISTRICT OF SAN JOSE.

Horace Hawes the Denouncer of said mine comes in his proper person and representing that his denouncement has been duly presented and admitted according to law and that the Citations of the parties and publication of the notices to absent possessors have all been made and completed in exact conformity with the laws of the land as will appear by reference to the Records and proceedings in the cause and averring further that the former owners or possessors of said mine have in every essential particular failed to comply with the conditions under which they first obtained possession of said mine, whereby they have lost all right thereto, and furthermore, that by reason of the insufficient registry and non-compliance originally with the requisites prescribed by law they the said former owners and claimants defendants in these proceedings, never acquired any title whatever to said mine, all of which facts the said Horace Hawes now stands ready here in Court with the witnesses, records, and documents offering to prove and substantiate in due form of law, but the Judge of First Instance for the time being contrary to the orders heretofore made and entered of record, refusing to permit the said evidence to be given, the said Horace Hawes does hereby solemnly protest against such refusal and that having done all in his power to establish the right, but being prevented from proceeding further, he the said Horace Hawes or any other parties if there be any, interested in the just and legal termination of the proceedings shall not be prejudiced by the refusal above mentioned, the said Horace Hawes solemnly declaring that the claim against the possessors of said mine is not in any manner abandoned but that it will be in future insisted on and prosecuted together with any and all rights and advantages that may have been gained or may result from the proceedings had in the said Denouncement.

HORACE HAWES.
Nov. 15th, 1849.

Witness: C. T. RYLAND.
J. C. CONROY.

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STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I, Jno. B Hewson County Clerk and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San José (in the present county of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes, the papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court this 12th day of August A. D. 1857.

SEAL

JNO. B. HEWSON, Clerk,
By LEVI P. PECK, Deputy.

EXHIBIT H. H., No. 16.

IN THE 1ST ALCALDE'S COURT OR COURT OF 1ST INSTANCE FOR THE DISTRICT OF SAN JOSÉ.

IN THE MATTER OF THE DENOUNCEMENT OF THE MINE OF NEW ALMADEN.

HORACE HAWS, }
vs.
J. A. FORBES, }
& others, }

In this case the parties appeared by their counsel on the 12th Nov. 1849, and the Defendants excepted to the jurisdiction of this Court, *ratione materia*, either as Alcalde or Judge of First Instance on the ground that exclusive Jurisdiction was given by the Ordinances of Mines and another Tribunal. The Court adjorn over to the 15th inst., when the parties came into Court and Plaintiff moved the Court to require the Defendants or some one authorized for them to state the ground of their exceptions in writing, whereupon the Defendants filed the following, viz, In the matter of the denouncement of the mine of New Almaden by Horace Hawes.

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The defendants in the above case excepted to the jurisdiction of the 1st Alcalde and Judge of 1st Instance because the Ordinances of mines establishes a special and exclusive Jurisdiction in another Court, and provides that in default of such Court the party shall go before the Court of the nearest Territory having such Jurisdiction.

J. M. JONES, Atty for Def'ts.

By reference to the translation of the Ordinance of Mines, certified by the Interpreter the following provisions seem to me to be clearly established.

1st. That the act or decree of 1842 in title 10, which treats of the Administration of Justice in matters pertaining to mines, a Court of First Instance is established with exclusive Jurisdiction over all such matters, composed of three Territorial deputies, whose functions, political and Judicial were the same as those of the Courts of Mines, established by the ancient Ordinance.

2d. That the Courts of Mines established by the ancient Ordinance are declared to possess exclusive Jurisdiction of discoveries denouncements and desertions &c. of mines.

3d. That he who discovered a mine or denounced it for abandonment, could only do so by the proper writing presented to the Court of of Mines of the Territory and in default of such Court the denouncement should be made before that of the nearest Territory.

These Ordinances, upon whose validity the Plaintiff himself relies, have thus established an exclusive Jurisdiction over the matter in contest in a special tribunal and provided for the case, where no such tribunal existed in the Territory. This exclusive Jurisdiction vested in one Court and was an (in the opinion of the Court,) an absolute prohibition of the exercise of that Jurisdiction by any other, and it seems this Court has no more right to claim such jurisdiction in the absence of the special tribunal than the Court of the Alcalde of the 2d or of the 3d Instance.

It is therefore considered by the Court that this suit be dismissed at the costs of the plaintiffs for want of Jurisdiction, in conformity to the Laws of mining over the subject matter, at the same time Plaintiff asked for an appeal which was granted in open Court. November 15 1849.

Attest: H. C. MELONE, Clerk.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I John B. Hewson County Clerk, and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California,

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in and for Santa Clara County, do hereby certify the foregoing to be a true and correct transcript of the original entry on the Records of the 1st Alcalde's Court or Court of First Instance for the District of San José, (in the present county of Santa Clara aforesaid,) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Haws, as appears on the records of said Court, the papers and Records of said Court being now in my possession as Clerk of the aforesaid District Court.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said District Court thie 12th day of August, A. D. 1857.

JNO. B. HEWSON, Clerk.

{ SEAL. }

EXHIBIT H. H., No. 12.

S. JUEZ.

Es la question de presente, q^{e} el S. Juez de 1ª instancia no tiene jurisdicion o q^{e} ni es competente en los negocios de mineria mi opinion fundada es del sig^{te} modo.

Mejico constituida en republica el año de 24 declaró soberanias cada estado terminaba sus cuestiones en los trales q^{e} se crio; asi es q^{e} el Tral Real, sumenio, de q^{e} ablar las ordenanzas concluyó desde la fecha indicada.

Los estados en uso de su soberania adoptaron, lo q^{e} mejor les pareció, unos, que no pasaron de cinco (entre veinte y cuatro) dejaron los Trates de mineria, es decir los diputaciones, o Jusgados de primera instancia, y los otros poco despues fueron modificado de tal modo, q^{e} concluyeron con las diputaciones.

El mismo Supremo g^{no} con facultades estraordinarias estableció Jusgados de otra especie, en el año de cuarenta y
lo que, no tuvo efecto, o no se practicó.

En el gno. central, o vaser Tacubaya, el gno. decreto la abolicion de los Trales de mineria, y en consecuéncia los Jueses de 1ª ins^{ta} que daron expeditos p^{a}. denuncios asi como los Alcaldes a prevencion p^{a}. registros; mas vuelta la federacion, las estados podia disponer lo q^{e}. mas conveinera, y casi ninguno adopto el sistema de diputaciones q^{e}. previene la ordenanza, mas en consecuencia con la constitucion g'ral q^{e}. daba la soberania a cada estado; p^{a}. consig^{te}. los trates establecidos en la ordenanza en nada eran necessarios, y quedaron los Jueses comunes, con la Jurisdiccion privativa de ordenanza p^{a}. q^{e}. asi se les

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declaraba, y por q°. a falta del Juez privilegiado ha de haber Jues, y este es el Juez comun, el Juez de primera inst^a.

Mas suponiendo q°. solo los Trales de Mineria conociera por disposicion de los estados, o departamentos de la Republica Mejicana, California, ni como departamen^to. ni como estado designo Tral de Mineria, y en semijante caso debe occurrirse al Tral, comun es decir al Alçalde p^a. un registro al Juez de primera inst^a. p^a. un denuncio en virtud de su autoridad en lo contencioso.

Decir q°. no hay autoridad en el estado de California (como es su categoria constit^l.) es ridiculo ablandose precisam^te. de un denuncio, en el q°. p^r. titulo de registro, conocio un Alcalde, p^r q° ; si su autoridad Castó p^a. registrar, en calidad de autoridad comun el Jues de 1^a. inst^a. debe conocer y determinar, p^a. q°. sin agrabiar al estado de California autoridad debe haber p^a. decidir una contienda, y tal autoridad debe serlo solo el Jues de primera inst^a.

Suponer ó querer q°. la ordenanza tenga Valides en el supletorio de Tral. de mineria siendo California de estados unidos, donde no se conocen reglamentos de mineria, seria tanto como decir q°. la question de denuncio fuera, ventilarse a Mejico, Perú, &, y esto ni es decente proponer a abogados de Norte America.

J. LAYHI.

Sworn and subscribed before me the 15th Nov. 1849.

H. C. MELONE,
Clerk of Court of First Instance.

Filed Nov. 15, 1849.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA. } ss.

I, John B. Hewson, County Clerk and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara County, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose (in the present county of Santa Clara aforesaid) in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes. The papers and Records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

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In Testimony whereof I have hereunto set my hand and affixed the Seal of said District Court this 23d day of July, A. D. 1857.

JNO. B. HEWSON,
Clerk.

{ SEAL }

EXHIBIT H. H., No. 13.

The laws of Mexico from the date of the treaty between that country and the United States, cease in their operations so far as regards the acquisition of public lands, and also so far as those laws conflict with the political and legal system of the U. States. Therefore no person can acquire a Grant of public lands, and as a matter of course no person can dispute the titles of the mines of New Almaden or that of Guadalupe.

I have now to request of you to file a bill in Chancery to quiet title, and that an injunction be issued against those individuals who may be disposed to question our titles.

J. A. FORBES.

Santa Clara, 16th Nov. 1849.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I, John B. Hewson, County Clerk and *ex officio* Clerk of the District Court of the Third Judicial District of the State of California, in and for Santa Clara county, do hereby certify the foregoing to be a true and correct copy of an original paper filed in the 1st Alcalde's Court for the District of San Jose (in the present county of Santa Clara aforesaid in the matter of the Denouncement of the New Almaden Quicksilver Mines for desertion, by Horace Hawes. The papers and records of said Alcalde's Court being now in my possession as Clerk of the aforesaid District Court.

In Testimony whereof I have hereunto set my hand and affixed the Seal of said District Court this 15th day of August, A. D. 1857.

JNO. B. HEWSON,
Clerk.

{ SEAL }

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NOTICE.

UNITED STATES DISTRICT COURT.

THE UNITED STATES
vs. } D. C. 420.
ANDRES CASTILLERO.

SAN FRANCISCO, August 18, 1856.

SIR:

You are hereby requested to produce the original paper of which Exhibit "A," to the petition, is a copy, to be used in the examination of witnesses, now progressing before Special Commissioner J. Edgar Grymes, Esq.

Yours, &c.

P. DELLA TORRE,
U. S. Attorney,

Messrs. HALLECK, PEACHEY & BILLINGS,
Attys. for Castillero.

DEPOSITION OF JAMES W. WEEKES.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SAN FRANCISCO, August 18th, 1857.

On this day, before J. Edgar Grymes, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c. &c., came James W. Weekes, a witness produced on behalf of the United States in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 366 on the the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

PRESENT:—United States District Attorney, represented by Mr. Edmund Randolph; and Frederick Billings, Esq., for claimant.

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QUESTIONS BY EDMUND RANDOLPH, ESQ.

1st Ques.—What is your name, age and place of residence?

1st Ans.—My name is James W. Weekes, 45 years old; I reside in Santa Clara County.

2d Ques.—How long have you lived in California?

2d Ans.—Since 1831.

3d Ques.—Have you ever held any office in California; if yea, what, when and where?

3d Ans.—I was Alcalde in 1848, in San José.

4th Ques.—Have you testified before in this case?

4th Ans.—Yes, sir.

5th Ques.—Counsel for the United States here shows to the witness the paper produced by the counsel for the claimant in pursuance of a notice issued by the U. S. District Attorney, attached to this deposition, and of which] paper a copy marked "Exhibit R., No. 2," is attached to this deposition, and he asked the witness whether he ever saw said paper before?

5th Ans.—I have seen it before, and it is my signature written on page No. 9.

6th Ques.—What writing is it that your name is signed to?

6th Ans.—It is a certificate in Spanish, which being translated, is as follows:

"COURT OF THE JUSTICE OF THE PEACE,
SAN JOSE GUADALUPE, UPPER CALIFORNIA.

I certify in due form, that the foregoing is a faithful copy, made to the letter from its original, the espediente of the mine of Santa Clara or New Almaden, which exists in the Archives under my charge, to which I refer. And in testimony whereof, I have signed this twentieth day of January, one thousand, eight hundred and forty-eight."

7th Ques.—Was this espediente in the archives at that time?

(Question objected to by claimant's counsel as incompetent, and as tending to vary or impeach the official certificate of the witness.)

7th Ans.—This is a copy of what remained in the archives at that time.

8th Ques.—Who recorded it in the Book?

8th Ans.—Myself.

9th Ques.—Where did you get the paper from which you recorded in the book?

9th Ans.—From Mr. James Alexander Forbes.

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10th Ques.—When was you appointed Alcalde?

10th Ans.—In 1848, I believe.

11th Ques.—Was you Alcalde when you recorded that paper in the Book?

11th Ans.—Yes.

12th Ques.—When you say that you got that paper from Mr. Forbes, do you mean to say that he brought it to you and asked you to record it?

(Question objected to as leading.)

12th Ans.—Yes.

13th Ques.—Did you ever see more than one Expediente of that mine in your office while you were Alcalde?

13th Ans.—I have seen this, another on foolscap, and what I recorded in the book from this.

14th Ques.—Whether the paper now shown you is a copy which you made from the Expediente which you said you had recorded in the book?

14th Ans.—This was made by Mr. Forbes and copied into the book.

15th Ques.—When was it that you first saw any of these papers of which you have spoken?

15th Ans.—I saw the first book when Captain Burton was Alcalde. That was the book on foolscap paper, containing the first denouncement of the mine made in 1845. When I was Alcalde I saw them. This one I copied a part of. Since I come to consider it I cannot say whether it was the possession or this which I copied in a book.

16th Ques.—What possession do you mean?

16th Ans.—The possession I mean is what I have already testified to, of giving Mr. Forbes possession of the mine of New Almaden, in my former deposition.

17 Ques.—Was it that possession that you copied in that book?

(Question objected to as leading.)

17th Ans.—I believe it was. Since I recollect, I believe the whole of this is a copy of the foolscap paper book which is] in the archives which I saw when Captain Burton was Alcalde, and that this is all made from it, I believe.

18th Ques.—The witness being shown the original document from the files of the County Recorder's office of Santa Clara Co., and produced by G. M. Yoell, and referred to in his deposition of to-day, is asked whether this is the foolscap paper book from which the paper before him is a copy, and to the certificate to which his name appears.

18th Ans.—I believe this is the one.

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Examination adjourned until to-morrow, Wednesday, August 19th, 1857, at 10 o'clock, A. M.

WEDNESDAY, August 19th, 1857.

Counsel for both parties present. Examination adjourned to Thursday, August 20th, at 3 o'clock, P. M.

J. EDGAR GRYMES,
Commissioner &c.

THURSDAY, August 20th, 3 o'clock, P. M.

Counsel for respective parties present.

19th Ques.—Did you make the copy yourself that you signed at the request of James Alexander Forbes, as you testified?

19th Ans.—I did not.

20th Ques.—Did you take the original it was copied from and compare this paper with that original to see whether it was correct?

20th Ans.—I believe I did not.

21st Ques.—What made you sign it, then?

21st Ans.—I considered it was right, that it was a true copy of the original.

22d Ques.—What made you consider it so without comparing it?

22d Ans.—I have no other reason than that I believed it right.

23d Ques.—Do you mean to say that you considered it so because Mr. Forbes told you so, and brought it to you?

23d Ans.—I suspected that it was right or I would not have signed; not particularly because he brought it.

24th Ques.—Did Mr. Forbes bring the paper already written out, or did he write it in your office?

24th Ans.—I do not recollect.

25th Ques.—When he brought this paper, or when he showed you the paper which you have signed, did he show you any other paper as the original from which this was copied?

25th Ans.—I believe not.

26th Ques.—Do you remember where you were when you signed this paper?

26th Ans.—No, sir, I do not.

27th Ques.—The day after this paper was signed, you have before testified on your former examination, that you gave a possession of the quicksilver mine to Mr. Alexander Forbes;—do you remember at what time of the day you went out to the mine, and at what time you returned?

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(Objected to because the question is leading; because the witness has not stated that he gave the possession the day after the paper was signed; the question argumentative.)

(Question withdrawn by the U. S. District Attorney.)

28th Ques.—On your former examination in this case you testified that on the 21st day of January, 1848, which is the day immediately following the date of your certificate in the Expediente of the mine, as it is called, now before you, you gave possession of the mine to Mr. Alex. Forbes; do you remember at what time of the day you went out to the mine to give to Mr. Alexander Forbes that possession, and about what time you returned?

28th Ans.—I believe I left San José at about 10 o'clock, and returned after sunset.

29th Ques.—Were there any papers executed, signed, while you were at the mine; if so, what were they?

29th Ans.—None to my recollection.

30th Ques.—Were there any executed that night when you returned?

30th Ans.—No, sir.

31st Ques.—Where were you then when you signed the act of possession to Mr. Alex. Forbes?

31st Ans.—I believe I signed it in the office.

31d Ques.—You did not sign it before you went to the mine, I suppose?

(Question objected to as leading.)

32d Ans.—No, sir.

33d Ques.—When did you sign it then?

33d Ans.—I believe I signed it after. I have no recollection when I signed it, whether it was on that day, or any other day afterwards.

34th Ques.—Do you know any better on what day you signed this certificate, "R., No. 2," exactly?

34th Ans.—I have no remembrance. I think it was after I gave possession.

35th Ques.—Do you know now what was in the old papers in your office when you were Alcalde?

35th Ans.—I do not now know exactly what was in the papers. I know that the writings were relative to the mines; there were the denunciation of Castillero, as also I believe there was a possession of Pico attached; I believe so, but am not certain, it is so long ago.

36th Ques.—Did or did not Jas. Alex. Forbes return with you to the mine that day you gave possession to Mr. Alexander Forbes.?

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36th Ans.—He did not to the best of my knowledge.

37th Ques.—Do you know what time he returned?

37th Ans.—I do not. I think he returned the next day, but I am not positive.

CROSS-EXAMINATION.

38th Ques.—Have you any doubt that you signed your certificate on "R. No. 2," on the day on which it purports to be signed?

38th Ans.—I have. The papers may have been drawn out and dated before I signed them.

39th Ques.—Have you any other doubt than that which arises from the lapse of time, so that you cannot distinctly remember particular occurrences?

39th Ans.—That is the only doubt I have.

40th Ques.—Is it not your belief that the certificate which you signed, was signed on the day it purports to be signed, and was true?

40th Ans.—I believed it to be true, but I have no recollection of the day I signed it. I believe it to be true and signed on the day it purports to be.

41st Ques.—If you had signed papers about that time, would you be able to recollect now distinctly the days on which you had signed them?

41st Ans.—I could not positively.

42d Ques.—At the time you were Alcalde were there in the archives an expediente or little book relating to the possession of the New Almaden Mine?

42d Ans.—Yes sir. The possession that I gave was copied in a book, as also there was a possession of Pico in another which has been mentioned, according to the best of my belief, as I have stated before.

43d Ques.—The lilttle book relating to the possession of the mine which you say you saw in the archives when Captain Burton was Alcalde, was that in your possession when you were Alcalde?

43d Ans.—It was.

44th Ques.—The witness being shown the original document referred to in question 10, is asked if that is the book which he saw in the archives when Capt. Burton was Alcalde, and if it was in the archives when he was Alcalde.

44th Ans.—It appears to me to be the one; I am not positive.

DIRECT EXAMINATION RESUMED.

45th Ques.—Do you remember whether in that old book that was in the office of the Alcalde in Burton's and your time, there was an

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agreement of Partnership between Castillero, Father Real and the two Robles and Genl. Castro, to work the mine?

45th Ans.—I have no recollection of that matter. It appears to me that I have seen the names, but I have no recollection.

46th Ques.—Where does it appear to you that you saw those names in writing of that sort?

46th Ans.—I think I have read them in the documents in the old book.

47th Ques.—Did you or did you not see in that old book a petition of Genl. Castro about that mine?

47th Ans.—I have no recollection. I may have seen. I cannot recollect all the old things that I have seen in books.

48th Ques.—To whom did you transfer the books when you left the Alcalde's office?

48th Ans.—To Charles White, who is now dead.

49th Ques.—Did Mr. Forbes, before presenting to yon the copy which you signed, ask to see the old book that you had in the office?

49th Ans.—I have no doubt he saw it before, and when Capt. Burton was Alcalde.

50th Ques.—Do you mean to say he got the old book to make the copy which you afterwards signed?

50th Ans.—That I do not know. It is my opinion that he drew it from the same book; but whether he drew correctly or not I cannot say. I do not remember that he asked me for the book. I have no recollection one way or the other. I have that opinion, because I believe that he had seen the book before and in Capt. Burton's time.

51st Ques. Being asked what were his habits in 1848, at the time he was Alcalde, whether he was a teetotaller, or sometimes took too much in those days when he was Alcalde:—

51st Ans.—I know that I could take my portion the same as a great many foreigners could in those days.

JAMES W. WEEKS.

Sworn to and subscribed before me, this 20th day of August, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Filed August 29th, 1857.

W. H. CHEVERS,
Deputy.

EXHIBIT TO DEPOSITION OF JAS. W. WEEKS.

This Exhibit, R. No. 2, is a copy of the document referred to in Jas. W. Weeks' deposition, produced by counsel for the claimants,

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pursuant to notice of District Attorney, and is to serve in place of the document produced by said attorneys, which is returned to them.

J. EDGAR GRYMES,
Special Commissioner.

AÑO DE 1845.

EXPEDIENTE DEL DENUNCIO, POSESION, Y COMPAÑIA DE LA MINA DE AZOGUE NOMBRADA SANTA CLARA, JURISDICCION DE SAN JOSÉ GUADALUPE, EN LA ALTA CALIFORNIA.

SEÑOR ALCALDE DE 1ª. NOMINACION:

Andres Castellero Capn. de Caballeria permanente, y residente hoy en este Depart°. Ante la notoria justificacion de V. hace presente, que habiendo descubierto una veta de plata con ley de oro, en terreno del Rancho perteneciente al Sargento retirado de la compañia presidial de San Francº. Jose Reyes Berreyesa, y queriendo trabajarla en Compª suplico a V. que arreglado a la ordenanza de mineria, se sirva de fijar rotulones en los parajes publicos de la jurisdiccion para que llegado el tiempo de la posesion juridica asegure mi derecho segun las leyes de la materia.

A. V. suplico provea de conformidad, en lo que recibiré merced y justicia: advirtiendo este en papel comun correspondiente.

Pueblo de San Jose Guadº. Novbrº. veinte y dos de mil ocho cientos cuarenta y cinco.

ANDRES CASTILLERO.

Es copia a lo que me remito firmandola con dos testigos de asistencia.

En el Pueblo de San Jose Guadalupe a 18 de Enero de 1846.

PEDRO CHABOLLA.

De asistencia P. SAINSEVAIN.

De asª. JOSE SUÑOL.

SEÑOR ALCALDE DE 1ª NOMINACION DEL PUEBLO DE SAN JOSE GUADALUPE:

Andres Castillero, Capitan permanente de Caballeria, ante la notoria justificacion de V. comparesco y digo: entablando el mineral que

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con anterioridado denuncio a ese Juzgado, he sacado a mas de plata con ley de oro; Azogue liquido, en presencia de algunos concurentes que podré citar en caso oportuno. Y por convenir asi a mi derecho le he de merecer a V. que unido al escrito del denuncio se archive esta presentacion no Yendo en papel del sello por no haberlo.

A. V. suplico provea de conformidad: en lo que recibiré merced y justicia.

Sta Clara Dicbre. 3 de 1845.

ANDRES CASTILLERO.

Es copia a la que me remito firmandola con los testigos de mi asistencia.

En el Pueblo de San José Guadalupe a 13 de Enero de 1846.

PEDRO CHABOLLA.

De asª. P. SAINSEVAIN.
De asª. JOSE SUÑOL.

No encontrandose en el Departamento de California, Diputacion de mineria: y siendo esta la unica vez desde la poblacion de Alta California, que se trabaja con arreglo a las leyes un mineral: y careciendo ademas de Juez de Letras el 2º distrito. Yo el alcalde de 1ª. nominacion, C. Antonio Mª. Pico, he venido acompañado de dos testigos para actuar por receptoria, a falta de escribano publico que no lo hay; para dar posesion juridica de la mina conocido en el nombre de Santa Clara, en esta jurisdiccion, situada en el Rancho del Sargento retirado Jose Reyes Berreyesa; porque habiendo fenecido el tiempo que señala la ordenanza de mineria para deducir su accion el C. D. Andres Castillero, y que otros pudieran a legar mejor derecho, desde el tiempo del denuncio a la fha. Ye nanbrandose dho. mineral con abundancia de metales explotados, el pozo hecho con las reglas del arte; y produciendo la elaboracion de la mina, abundancia de Azogue liquido, segun las muestras que tiene el Juzgado; y estando tan recomendado por leyes vigentes, la proteccion de un articulo tan necesario para la amalgamacion de oro y plata en la Republica, he venido en conceder tres mil varas de terreno por todos rumbos, a reserva de lo que señale la Ordenanza General de mineria por ser trabajada en compañia, de lo que doy fé, firmando conmigo los testigos que dando agregado este acto de posesion al cumulo del expediente que queda depositado en este archivo de mi cargo no yendo en papel sellado por que no lo hay en los terminos de la ley.

Juzgado de San Jose de Guadalupe y Diciembre 30 de 1845.

ANTONIO Mª. PICO.

De asª. ANTONIO SUÑOL.
De asª. JOSE NORIEGA.

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He recibido del Sr. D. Andres Castillero la cantidad de veinte y cinco pesos por cuenta de los derechos de posesion de la Mina de Azogue, que está en está jurisdiccion de mi cargo, nombrada de Santa Clara.

Con 25 pesos.

Juzgado de San José Guadalupe Diciembre 30 de 1845.

ANTONIO Mª. PICO.

Escritura de compañia que el Sr. Dⁿ. Andres Castillero Capⁿ. de Caballeria permanente celebra con el Sōr. Comdᵗᵉ. Grāl Dⁿ. Jose Castro, los Srēs Secundino Robles y Teodoro Robles, y una cesion voluntaria que hacen los compañeros perpetuamente, al R. P. F. Jose Mª. del Refugio Suares del Real, de una mina de plata, oro, y azogue, en el Rancho de D. Jose Reyes Berreyesa, en la jurisdiccion del pueblo de San José Guadalupe.

Artº. 1.—El Sōr Don Andres Castillero, arreglandose en un todo a la Ordenanza de Mineria, hace formal compañia perpetuamente con los mencionados Señores en esta forma. La mitad de la mina que es de la que puede disponer, se dividirá en tres acciones en esta forma cuatro barras al Sōr D. José Castro, cuatro barras a los Sres Secundino y Teodoro Robles; y las otros cuatro barras al R. P. F. José Mª. R. S. del Real en clase de donacion perpetua.

Artº. 2.—Ninguno de los compañeros podrá vender o enagenar ninguna de sus acciones; de manera que el que lo verificare perdera ser derecho quedando reunido en los demas companéros.

Artº. 3º.—Los gastos se haran en proporcion a las acciones llevandose una cuenta formal por un contador, que se pagara del fondo comun.

Artº. 4º.—Arreglandose en un todo a lo que previene la ordenanza de mineria, cualquiera deferencia se resolverá por los mismos compañeros.

Artº. 5º.—Dirigéra las labores gastos y trabajos Dⁿ. Andres Castillero; y en su defecto el R. P. F. Jose Mª. R. S. del Real.

Artº. 6.—No se extraerá de los productos, mas cantidades que las que necesiten para el arreglo de la negociacion, hasta que se arreglen los trabajos: y cualquiera cantidad que sea ha de ser con consentimiento de todos los compañeros hasta que esté arreglada la negociacion.

Artº. 7º.—Estos convenios se autorizarár por el Sōr Prefecto del 2º. distrito, D. Manuel Castro depositandose el documento original en el archivo del partido; quedando una copia certificada por S. S. interesados.

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Mision de Santa Clara dos de Noviembre de mil ocho cientes cuarenta y cinco.

ANDRES CASTILLERO.

Por el Sr Comdte. Gral. Dn Jose Castro,
ANDRES CASTILLERO.
F. JOSE MA. DEL R. S. DEL REAL.

Por los Srēs Secundino Robles y Teodoro Robles.
FRANco. ARCE.

Es copia fiel del original al que me remito.
Sta. Clara Diciembre ocho de mil ocho cientos cuarente y cinco.
ANTONIO MA. PICO.
MANL. CASTRO.

JUZGADO DE PAZ DEL PUEBLO EE SAN JOSÈ GUADALUPE, ALTA CALIFORNIA.

Certifico en toda forma que lo que antecede es copia fiel sacada a letra de su original expediente de la mina de la mina de Sta Clara o nueva Almaden que obra en el archivo de mi cargo a que me remito y paro su debida constancia he firmado este hoy, veinte de Enero de mil ocho cientos cuarenta y ocho.

JAMES W. WEEKES,
Alcalde.

BRITISH CONSULATE FOR CALIFORNIAS,
S. FRANCISCO.

I hereby certify that the signature to the above certificate, is the true and proper hand writing of the person it represents, and that it is worthy of all faith and credit.

L. S. In witness whereof, I have hereunto placed my hand and official seal, this twenty-first day of January, one thousand eight hundred and forty-eight.

JAMES ALEXR. FORBES,
Vice Consul.

JESUS VEGAR ESCRIBANO PUBLICO,

Certifico y doy fe que la a ultima firma que presede del Señor Vice consul Don James Alejandro Forbes es la propia que dicho Señor usa

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y acorestumbra constandome asi cuando lo conoci a su tranata en esta Ciudad para la Alta California por varios actos que practico en la cosa de los Señores Barron, Forbes y Compañia.

Y a pedimento de los mismos Señores signo y firmo esta constancia en Tepic á quince de Marzo de mil ochocientos cincuenta.

JESUS VEJAR.

El Alcalde 1°. Constitucional y Escribano Publico que firmamos, Certificamos y damos fe que el Signo y firma que antecede es al que usa a y aconstumbra el Escribano Don Jesus Vejar en todos los actos que ante el pasan.

Asi lo comprobamos en Tepic á quince de Marzo de mil ochocientos cincuenta.

LORET°. CORONA.

EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America for this district hereby certify that the signatures attached to the foregoing Document are in the true hand writing of the subscribers who legally hold the situations therein represented and are worthy of all faith and credit.

In testimony whereof I hereunto set my hand and seal of office this first day of December in the year one thousand eight hundred and fifty, in the city of Tepic.

G. W. P. BISSELL,
U. S. Consul.

DEPOSITION OF FRANK LEWIS.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, August 18th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California,

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duly authorized to administer oaths, &c., &c., came Frank Lewis, a witness produced on behalf of the United States, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 366 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows.

PRESENT:—U. S. Dist. Attorney, represented by Edmund Randolph, Esq., and Frederick Billings for claimant.

QUESTIONS BY EDMUND RANDOLPH, ESQ.

1st Ques.—What is your name, age, present occupation, and residence?

1st Ans.—My name is Frank Lewis, 29 years old; I am clerking, and reside in Santa Cruz County, and formerly lived in Santa Clara County.

2d Ques.—Have you ever been employed in a public office; if so, what office, and at what time, and where?

2d Ans.—I have been employed in the Recorder's office as Deputy, in Santa Clara County. From about the 15th of August, 1853, to sometime in the fall of 1855.

3d Ques.—Are you the same person who testified before in this case, called by the claimant?

3d Ans.—I am.

4th Ques.—Will you look at the deposition of Frank Lewis in Transcript No. 366 in this case, from the Board of Land Commissioners, and state whether that is your deposition as you testified on your former examination in this case?

4th Ans.—The deposition is my own deposition, as nearly as I can recollect, having compared the copy in the transcript with the original in the archieves of the Surveyor General's office, and I found two clerical errors in the transcript. In answer to 2d question, the year should have been 1853 in place of 1855, as the year when I went in the County Recorder's office. In the 3d question where the word "*where*" is written in the transcript, it is *whence* in the original.

5th Ques.—In your 3d answer upon your former examination, you state that you there had before you a certain paper endorsed "Posesion de la Mina de Sta. Clara, Ano de 1845," which you had obtained from the files of the County Recorder's office, of Santa Clara County. Please to state whether the paper that you now hold in your hands is the same paper.

5th Ans.—It is.

6th Ques.—In the answer to the 5th question on your former examination you state that a paper marked "A., P. L.," which you

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then held before you, was the true and exact copy of the paper endorsed, "Posesion de la Mina de Sta. Clara, Ano de 1845," that you had carefully compared it at that moment with the original, and then held both original and copy before you. You will now please state whether the paper "A., P. L.," to which you then referred, is to be found in the transcript now shown you in this case from the Board of Land Commissioners.

6th Ans.—I find a part of that paper, but not the whole.

7th Ques.—Please look at "A., P. L.," annexed to the deposition of Antonio Suñol, on page 125 of the transcript in this case from the Board of Land Commissioners, and compare it with the original paper now shown you from the original archievs from the Land Commission, now in the office of the U. S. Surveyor General, and say whether or not they are the same. The original paper above referred to is marked "A., P. L. Exhibit to the deposition of Antonio Suñol. March 19, 1855."

7th Ans.—They are the same.

8th Ques.—Are either of the papers which you have just compared, the true and exact copy of the original document from the files of the County Recorder, which on your former examination you held in your hand and to which you then testified?

8th Ans.—They are not.

9th Ques.—In what do they differ?

9th Ans.—They are not a full copy. There is an entire document wanted; the first document being a petition of José Castro, and the marginal note signed by Pacheco is wanting. That is the only difference I know of.

10th Ques.—As to the endorsements which appear upon the original from the Recorder's office from Santa Clara, do these appear upon either of the copies you have just examined?

10th Ans.—They do not. I mean the following endorsements' First. "Filed 3 o'clock, P. M., 18th Jan'y, 1857. J. T. Richardson, Recorder S. C. C.," on first leaf of the outside sheet. Also, "Recorded (at request of J. Alex. Forbes) at 12 o'clock, M., March 16th, A. D., 1855, in Book G of Deeds, on pages 484, 485 and 486. Records of the County of Santa Clara."

"S. A. Clark, County Recorder, by F. Lewis, Deputy," on the last leaf of the fourth inside sheet. Also,—"Filed February 25th, A. D., 1853, at 11 o'clock, A. M. J. M. Murphy, Recorder, by S. O. Houghton, Deputy." That is on the last leaf of the outside sheet.

11th Ques.—Were those endorsements on the original papers at the time you first testified?

11th Ans.—They were.

12th Ques.—Please say whether those endorsements were on the copy which at that time you verified.

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12th Ans.—To the best of my recollection there were none of those endorsements there. The copy was the copy of the body of the instrument.

13th Ques.—Please explain how it was that you testified on your former examination that the copy, which you then verified, was a true and exact copy of the original, upon which these endorsements appear, and yet were not contained in the said copy.

13th Ans.—I did not consider them as a part of the original document. I was not especially asked about them. One of them being in pencil, I would not have certified to it except as being in pencil, and when I recorded it I did not record the pencil marks, to the best of my recollection.

14th Ques.—Please look at Exhibit R. No. 1 attached to the deposition of G. M. Yoell, and say whether that exhibit is not an exact copy of the original paper from the files of the Recorder's office of Santa Clara County, which on your former examination you held in your hands, and as to which you then testified, and which you now have before you.

14th Ans.—It is a traced copy of the original paper, containing also the endorsements of the different recorders, also the following endorsements on the outside leaf in red ink the words, "The above is written in pencil S. A. Clark, Recorder, by G. M. Yoell, Deputy," and in black ink, "Posesion de la Mina de Sta. Clara, Año de 1845." With the exception of those endorsements it is a true and exact copy of the papers which I verified before the Board of U. S. Land Commissioners.

The paper was recorded by the Recorder of Santa Clara County, as a matter of prudence, at the time that he was bringing the original to San Francisco.

CROSS-EXAMINATION WAIVED.

Sworn to and subscribed before me, this 18th day of August, A. D., 1857.

FRANK LEWIS,
Special Commissioner.

Filed August 29th, 1857.

W. H. CHEVERS,
Deputy.

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NOTICE OF MOTION.

U. S. DISTRICT COURT,
NOR. DIST. CALIFORNIA.

THE UNITED STATES
v.
ANDRES CASTILLERO.
D. C. 420: L. C. 366.

SAN FRANCISCO, Nov. 16, 1857.

GENTEMEN: Please take notice that on Monday, the 23d day of November instant, before the said District Court, at the opening of the Court, or as soon thereafter as the motion can be heard, I shall move the Court on behalf of the United States for leave to recall and further cross-examine Antonio Suñol and José Noriega, heretofore examined in this case before the U. S. Land Commission as witnesses on behalf of Andres Castillero, and for such order as may be proper to procure the attendance of said witnesses for the purpose of such cross-examination. Yours, &c.

P. DELLA TORRE,
U. S. Atty.

Mess. HALLECK, PEACHY & BILLINGS,
Attys for Claimant.

Service of copy within acknowledged this 16th Nov. A. D. 1857.
HALLECK, PEACHY & BILLINGS.

Filed Nov. 16th, 1857.
J. EDGAR GRYMES,
Deputy.

ORDER TO RECALL WITNESSES.

DISTRICT COURT OF THE U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.
No. 420 D. C. 336 L. C.

On motion of P. Della Torre, Esq., U. S. District Attorney, heretofore submitted and taken under advisement by the Court, it is ordered that Antonio Suñol and José Noriega, heretofore examined as witnesses in this cause on behalf of Andres Castillero, the claimant, be recalled for further cross-examination by the United States; but

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that said witnesses, in respect to any further examination in this Court, shall not he considered the witnesses of either party, and that each party shall have the right to cross-examine or contradict or impeach them as if they were introduced by the opposite party.

And it is further ordered that either party may procure the attendance of said witnesses by subpœna, as in ordinary cases, and the party requiring their attendance and examination shall not be estopped there by from cross-examining said witnesses, and contradicting and impeaching them to the same extent as if they were offered as witnesses by the opposite party.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Filed Nov. 20, 1857.

J. EDGAR GRYMES,
Deputy.

U. S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

DEPOSITION OF S. O. HOUGHTON.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, Oct. 23d, 1857.

On this day, before Cutler McAllister, a Commissioner of the U. S. for the Northern District of California, duly authorised to administer oaths &c., &c., came S. O. Houghton, a witness produced on behalf of the Claimants, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in case No. 360, on the Board of Commissioners, and was duly sworn and testified as follows:

PRESENT: The U. S. Dist. Atty., by A. P. Crittenden, for the United States, and A. C. Peachy, for Claimant.

QUESTIONS BY A. C. PEACHY, FOR CLAIMANT.

Question 1.—Your name, age, and place of residence?

Answer.—S. O. Houghton. I am 28 years of age. I live in San José.

Ques. 2.—What office do you hold?

Ans.—Deputy County Recorder, Santa Clara County.

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Ques. 3.—Have you brought with you from said office any document? if yea, produce it.

Ans. —I have brought with me from said office a Spanish document called "Posesion de la Mina de Sta. Clara, Ano de 1845."

(It is hereby agreed between the Attorneys for the respective parties, that the paper endorsed "Act of Possession," "Almaden Mine" "Copy" "Exhibit R. No. 1." which is attached and referred to in the Deposition of Geo. M. Yoell, a witness produced on behalf of the United States, taken on the 18th August, 1857, in this cause and filed on the twenty-ninth August, 1857, is a traced copy of the document produced by the witness S. O. Houghton, and referred to in his answer to question 3d of this deposition.)

CROSS-EXAMINATION.

QUESTIONS BY ATTORNEY FOR U. S.

Ques. 1—How long have you been employed in the office of the County Recorder of Santa Clara County?

Ans. 1—I went in the office first in 1852, either in October or November; I remained there until sometime in the latter part of the summer, 1853. I was appointed Deputy again I think in August, 1856; that appointment according to my recollection ran untill March, 1857, altho' I was not in the office all the time. I think it was in March when the appointment was revoked. My present appointment is dated the 20th or 21st of October 1857. All this is according to the best of my recollection.

Ques. 2—When you went into the office in 1852, did you or not make yourself acquainted with the papers in the office?

Ans. 2—I had the entire charge of the office from the fall of 1852 to the summer of 1853. I was well acquainted with the papers in the office.

Ques. 3—Were there any documents, books, or papers in the Spanish language in the office of the County Recorder of Santa Clara County in the year 1852, at the time when you took charge of that office, and if yea, what?

Ans. 3—There were some Spanish books of Record there, there were some few Spanish papers there, that were not considered of any value. There were but very few of these papers, they are all there still, my recollection about them is very indefinite, it was so long ago.

Ques. 4—Did you or did you not, in the year 1852, see in the office of the County Recorder of Santa Clara County, to the best of your recollection, the document in the Spanish language here produced by you in evidence?

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Ans. 4—I have no recollection of having seen it in 1852.

Ques. 5—Can you or can you not say whether that paper was in that office in the year 1852, to the best of your recollection, knowledge and belief, founded upon your custody of the office and knowledge of its contents, as you have stated?

Ans. 5—I cannot state positively either way. It may have been there and it may not. The first recollection I have of the document is a few days before the date of this filing on the back of it, which is "Filed February 25th, A. D. 1853, at 12 o'clock, A. M., J. M. Murphy, Recorder, By S. O. Houghton, Deputy."

I think it was sometime in the month of February I think so from the time this filing is dated. Mr. James A. Forbes came to the office and desired to see the record of this paper, describing the paper to me. I examined the record and told him that it was not recorded there. He then looked for it himself and insisted that it was recorded there; he did not find it. He was looking for the record of the paper, not for the paper itself. Some days after that I found the paper in the office. There was a safe in the office, in the top of which were some papers; there was also a desk with pigeon holes containing papers, I found it in one or the other of them. I do not recollect which.

Ques. 6—When you found the paper, how did you recognize it?

Ans. 6—By the description given of it by Mr. Forbes.

Ques. 7.—If you had ever seen such a paper before in the office, would you not have remembered it?

Ans. 7—I think that I should.

Ques. 8—Were you not surprised when you saw the paper?

Ans. 8—I was surprised that such a paper should be there without its being known.

Ques. 9—Did Mr. James A. Forbes appear to be making a thorough search, and about how long was he in searching for the record of that paper of which you have before spoken?

Ans. 9—I think he and I together searched more than one day, he represented the paper to me to be of great importance, and I made a very thorough search for the record of it.

Ques. 10—Did you always keep your safe locked during business hours, and did you always keep a strict guard upon those pigeon holes, or was it possible to insert a paper into the top of that safe, or into those pigeon holes, without your observing when it was done?

Ans. 10—The safe and the pigeon holes were generally open during business hours when I was in the office; the books of record were kept in the safe, and the safe was kept open for the purpose of getting access to the books when persons came to examine them. There was no particular guard kept upon anything in the office. I never suffered any person there unless I was there. It is possible that anything

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might be inserted into the top of that safe or those pigeon holes without my knowing it.

Ques. 11—After you found the paper what did you do with it?

Ans. 11—I kept it there until Mr. Forbes came, and filed it at his request.

Ques. 12—In whose handwriting is that filing?

Aug. 12—This filing, dated Feb. 25, 1853, is in my hand writing.

Ques. 13—In what sort of a building was the County Recorder's office kept during the period of which you have just been speaking?

Ans. 13—From the fall of 1852 to the spring of 1853, it was kept in the second story of a wooden building. During a part of that time a family occupied the story below. There was a door opening on the street at the stairway. There were but two rooms up stairs in the building, the stairway led into one of them, the Recorder's Office was kept in the other; there was a portico above in the front of the house. A door and two windows opened on it; we had locks on the doors. I do not recollect now whether or not there was any fastening to the windows.

Ques. 14—What made you search for that paper?

Ans. 14—I think I must have found it by accident, because no one ever asked me to search for it.

Ques. 15—About what number or bulk of loose Spanish documents were there in the office at the time when you discovered the paper of which you have spoken; and about what length of time would it take to examine them all and see what they were?

Ans. 15—There were but very few, they would not make the bulk of the paper which I brought with me from the office, and of which I have been testifying.

Ques. 16—Had you at that time a knowledge of the Spanish language; could you read it readily or not; were you familiar with the Spanish handwriting so as readily to read Spanish manuscripts?

Ans. 16—I was well acquainted with the language at that time, and could read Spanish manuscript readily.

DIRECT EXAMINATION RESUMED.

Ques. 1—Had you ever made a search for this paper before Mr. Forbes came into your office on the occasion to which you have referred, to look for the record of it?

Ans. 1—I never looked for the record of it, or the paper itself, previous to that time.

S. O. HOUGHTON.

Subscribed and sworn to before me, this 23d Oct. 1857.

CUTLER MCALLISTER,
U. S. Comm'r.

Filed Nov. 20th, '57.

JNO. A. MONROE, Clerk.

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DEPOSITION OF H. W. HALLECK.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, October 23d, 1857.

On this day before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came H. W. Halleck, a witness produced on behalf of the Claimant, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT:—The U. S. District Attorney, by A. P. Crittenden, for the United States, and A. C. Peachy for Claimants.

QUESTIONS BY U. S. ATTORNEY.

(Witness put on his Voir Dire.)

Ques. 1.—Are you in any way connected with this case, either as party or counsel?

Ans. 1.—In no way as party; and as counsel in no way except as a partner in law business with Peachy & Billings, who are the counsel in this case. I do not receive and never have received any part of their fees as counsel in this case.

Ques. 2.—Does not your name appear as one of the counsel of record in this case?

Ans. 2.—It does, as a member of the law firm of Halleck, Peachy & Billings.

Ques. 3.—Do you mean to say that you have no interest in the fees of the firm of Halleck, Peachy & Billings for their services in this case; and do you mean to say that those fees are not to be allowed in your accounts with Peachy & Billings as partners?

Ans. 3.—I do mean so to say. Messrs. Peachy & Billings are and long have been the Attorneys for the mine of New Almaden, I have not, do not now, nor do I ever expect to have any part of the fees paid or to be paid for such services.

Ques. 4.—Then the professional services which you have rendered,

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and may hereafter render in this case are entirely gratuitous? Is that so?

Ans. 4.—All professional services which I have rendered in this case have been for Messrs. Peachy & Billings, never having been employed as counsel for the New Almaden Company. With respect to future professional services I am unable to answer further than to say that I am not employed, and do not expect to be employed in the case. I have not been and do not expect to be paid anything for the services rendered, by anybody.

Ques. 5.—Does your name still stand as one of the Attorneys of record in this case, or has it been withdrawn?

Ans. 5.—The name of the law firm of Halleck, Peachy & Billings, I believe, still stands as of record in this case; the name of the firm being used in the papers instead of Peachy & Billings, who are the parties employed as counsel.

Ques. 6.—Why was that done?

Ans. 6.—I do not know, further than it has been and is the custom of our office to use the name of the firm where the members of the firm were not all interested as counsel.

Ques. 7.—Were you not a partner of Messrs. Peachy & Billings when they were employed as counsel in this case?

Ans. 7.—Messrs Peachy & Billings were employed as counsel for the New Almaden Company in 1850, a short time after I became a member of the firm, and while I was in Oregon; and it was understood when I returned that the fees in that employment were to belong to them; and in all their subsequent engagements with the Company they made their own contracts and received the fees, my name not being used in the contracts, and they alone receiving the fees—as I take it for granted they got their fees.

Ques. 8.—Were there any special reasons for such an arrangement?

Ans. 8.—Yes, they were to perform the services and incur the responsibilities of counsel in the case.

Ques. 9.—As you were their partner at the time the contract was made, and should naturally have participated in its benefits and responsibilities, why were you omitted in entering into this arrangement?

Ans. 9.—When the arrangement was first made I was not here; and in a number of other instances the fees of cases conducted in the names of the law firms of which I have been a member, have not been divided equally among the partners, the members who did the principal business in those cases being entitled, by a private arrangement between ourselves, to most of the fees.

Ques. 10.—In answer to question concerning professional services rendered or to be rendered in this case, you have spoken of the New

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Almaden Company, what has that Company to do with this case in which the parties on record are the United States and Andres Castillero?

(Question objected to by Attorney for Claimant, as being irrelevant and not proper to be put to a witness on examination upon his *Voir Dire*.)

Ans. 10.—I mean that the New Almaden Company employ Messrs. Peachy & Billings to prosecute this claim of Andres Castillero, or, at least, as counsel for that Company they do so prosecute this claim.

Ques. 11.—Who compose the New Almaden Company?

(Objected to on the same ground as question 10.)

Ans. 11.—Mr. Parrott (John), Mr. Wm. E. Barron, Mr. J. R. Bolton, Mr. Escandon, Mr. Martinez, Mr. E. Barron, of the City of Mexico; Mr. E. W. Barron and Mr. Wm. Forbes, of Mexico, and others have been and perhaps some others now are members of that Company. I cannot say positively that all the persons I have named are now members of the Company; I mention them as persons whom I believe to be members of the Company.

(Attorney for Claimant objects to the answer of the witness as being incompetent to prove the existence of the Company or its members.)

Ques. 12.—Is Mr. Alexander Forbes, formerly of Tepic, a member, or was he ever a member of that Company?

(Question objected to on the same grounds as preceding question and answer.)

Ans. 12.—I do not think he is, although I cannot say positively. I think he was a member, but I do not know when he ceased to be one. I have understood for several years that he had ceased to be a member.

Ques. 13.—At the request of what members or agent of that Company did the firm of Halleck, Peachy & Billings appear as counsel for the claimant in this case?

(Objected to as irrelevant.)

Ans. 13.—I think the agreement with Messrs. Peachy & Billings was made by Mr. Wm. E Barron, as the agent of the Company. It

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may have been by the firm of Bolton & Barron, of which Mr. Wm. E. Barron is a member, I do not recollect which. Mr. J. R. Bolton above spoken of is the other member of the firm of Bolton & Barron.

Ques. 14.—Are you or have you ever been employed as counsel by the New Almaden Company in any other matter or proceeding involving the title to the land and mine claimed in this case?

Ans. 14.—I have acted as counsel, as a member of the firm of Halleck, Peachy & Billings, in doing the law business of the firm, but individually or otherwise I have not been employed. As a member of the firm I have acted as counsel and have regarded myself as such. I have never received any fees for such services as Counsel.

Ques. 15.—Are you in the employ of the New Almaden Company in any capacity?

Ans. 15.—I am; as superintendent and general director of the operations and engineering at the mine, on a salary.

Ques. 16.—Since what time?

Ans. 16.—I was employed by Mr. De La Torre in March, or April, 1850, and have continued in that employment ever since.

Ques. 17.—What Mr. De La Torre?

Ans. 17.—Don Isidoro De La Torre. He was then a member of the Company, but I think is not now. He was of the house of Jecker, Torre & Co., but I think he is not a member of that house now. This firm has various establishments in Mexico: the principal one is at the City of Mexico.

Ques. 18.—What were the terms of your employment as superintendent?

Ans. 18.—I was employed to superintend the operations at the mine on a salary.

Ques. 19.—What salary, and how long was the contract to continue?

Ans. 19.—It was on a monthly salary to continue as long as both parties were satisfied. What that amount was is my own business, and I decline to answer it.

Examination adjourned until 1½ P. M., Oct. 24, 1857.

EXAMINATION CONTINUED, OCT. 24TH, 1857.

PRESENT:—A. P. Crittenden for U. S. District Attorney; A. C. Peachy for claimant.

Ques. 20.—What salary?

Ans. 20.—I decline answering this question.

Ques. 21.—Do you own any shares or interest in the New Almaden Company, or in the property which they claim in the mine and lands which are the subject of this action?

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Ans. 21.—I do not now, and never have owned any interest whatever.

Ques. 22.—Are you not interested to the amount of your salary in sustaining the title of the New Almaden Company to the mine and lands claimed in this suit?

(Question objected to by attorney for claimant because it is directed to ascertain interest which does not affect the witness' competency.)

Ans. 22.—I am not; my employment is only from month to month, and is not by the Company which claims ownership to the mine and lands of New Almaden. It is by lessees of that company who work the mine, and does not extend to the future.

Ques. 23.—Did not I understand you correctly as saying, in answer to a former question, that your employment was indefinite in point of time, but could be terminated at the end of any month?

Ans. 23.—I do not think I have said so. What I meant to say was that I was employed by the month on a monthly salary, which employment could be terminated at any time by either party.

Ques. 24.—Then I am not to understand that you make a new contract every month with your employers, but that you have worked heretofore, and are now continuing to work, under one contract which has extended over several years and many months?

Ans. 24.—My contract in 1850 was for that year, on a monthly salary, if both parties were satisfied to continue it through the year; at the end of that time I was requested to continue in the same service on the same monthly pay from month to month, but no new contract other than the request alluded to, and my continuing to render the same services, was ever entered into. I continued and still continue to act and to receive my monthly salary. When absent from the State or not performing the duties I was not considered as entitled to the monthly salary.

Ques. 25.—Under these circumstances are you not mistaken in saying that your contract does not extend to the future?

Ans. 25.—I think I am not; for, if my services are not wanted to-morrow, I have no contract which would continue my employment.

Ques. 26,—Do not tne lessees, by whom you are employed, necessarily hold under the same title with the lessors, the New Almaden Company; and if the latter were ejected by a superior title, would not their lease and your employment and salary thereby be brought to an end?

Ans. 26.—I suppose they hold under the same title; whether my employment by or salary from the lessees would cease or not is more than I can say.

Ques. 27.—If lessors and lessees and all their servants were ejected

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from the mines and the lands, do you conceive that there is a reasonable probability, or scarcely a possibility, that you could continue to receive your salary as superintendent and director?

Ans. 27.—On the supposition made I think it most probable that the lessees would not desire to employ me any longer in their service.

Ques. 28.—Do you conceive that the conclusion you have just stated may be classed among the certainties of human affairs?

Ans. 28.—I do not. I do not think it as probable that my employment by the lessees will terminate in the way indicated, as by my ceasing of my own free will to continue in such employment.

Ques. 29.—Are not the lessees of the property in this suit the same persons, or to a great extent the same persons, who compose the Company of New Almaden; and, if yea, what persons are the same who are members of the Company and lessees in the lease?

(Question objected to by attorney for claimant, first, because the U. S. attorney has no right to propound that question to the witness upon his examination on his *voire dire* second, because it is not competent, and third, because it is irrelevant.)

Ans. 29.—They are not the same; the only persons who, I believe, have an interest, both in the property claimed in this case and also in the lease or contract for working the mine, are Mr. E. Barron, of Mexico, Mr. William Forbes, of Mexico, and perhaps Mr. E. W. Barron, of Tepic, although I am not certain that he is a partner in the lease.

Ques. 30.—Who are the other persons who are partners in the lease?

(Question objected to by attorney for claimant, on the same grounds as the objections to the preceding question.)

Ans. 30.—I do not know who are at the present time. The house of Gibbs & Co., of Peru, the members of which I do not know, were and I think still are interested in the lease, also Mr. Escandon, of Mexico, whom I have mentioned, I think, incorrectly as one of the owners. My recollection now is that he claimed no interest in the title to the mine.

Ques. 31.—Who was the person acting in behalf of the lessees with whom you contracted?

Ans. 31.—Don Isidoro De La Torre. The lessees employ me, and the owners of the mine employ the counsel; we are employed by different parties.

Ques. 32.—In March or April, when Mr. De La Torre employed

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you for the lessees, was he not at that time one of those claiming title to the mine, &c—I mean a member of the New Almaden Company?

(Question objected to by attorney for claiment, on the same grounds of objection as to question 29.)

Ans. 32.—He then claimed to be one of the owners, and also to have an interest in the lease. He employed me on the part of the lessees, and afterwards informed me that his act in employing me was approved by the majority of the other lessees.

Ques. 33.—In your 11th, 12th and 17th answers you have mentioned as persons who are or have been members of the New Almaden Company, those who follow, viz; Mr. John Parrott, Wm. E. Barron, J. R. Bolton, Mr. Escandon, (corrected,) Mr. Martinez, Mr. E. Barron, of the City of Mexico, Mr. E. W. Barron, Wm. Forbes, of Mexico, Alexander Forbes, of Tepic, and Mr. Isidoro De La Torre, of the house of Jecker, Torre & Co.; should you not add to this list James Alexander Forbes, of the town of Santa Clara, county of Santa Clara, and Robert Walkinshaw, of New Almaden, county of Santa Clara?

Ans. 33.—I should add the name of James Alexander Forbes as one who has been an owner, and of Robert Walkinshaw as one who now is. Probably there are others whom I do not at this moment recollect.

Ques. 34.—Were not both of these persons last mentioned, members of the Company in the years 1849, 1850, 1851, 1852 and 1853?

(Question objected to by attorney for claimant, on the same grounds of objection as those to question 29.)

Ans. 34.—I believe that at the dates mentioned they were both members of the New Almaden Company which claimed ownership, but neither were of the company by which I am employed.

Ques. 35.—What salary do you receive as superintendent and director?

Ans. 35.—I receive and have ever since I have been in the employ of the Company, $500 per month.

(*Witness objected by Attorney for the United States, on the score of interest.*)

DIRECT EXAMINATION COMMENCED.

QUESTIONS BY ATTORNEY FOR THE CLAIMANT.

Ques. 1.—Have you seen the document which was produced by S.

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O. Houghton, a witness examined on behalf of the claimant in this cause, on his examination taken on the 23d Oct., 1857?

Ans. 1.—I have. I have it now in my hands.

Ques. 2.—Please to state when and where you first saw that document?

Ans. 2.—I first saw it in the winter of 1851, in the office of Josiah Belden, Mayor of San José.

Ques. 3.—Do you know whether that document was ever removed from the office of the Mayor of San José; if yea, state when, and by whom, and to what place?

Ans. 3.—A document which I think is the one I now hold in my hand, was taken by Mr. Belden in my presence from his office, and transferred to the office of the County Recorder of Santa Clara county, in the winter of 1851, during the session of the Legislature, and I think in the month of January.

This is the same document which Mr. Houghton produced yesterday.

Ques. 4.—State why Mr. Belden removed that document as you have stated.

Ans. 4.—I asked him for a certified copy of it; he said he had no power to give one, but would transfer it to the office of the Recorder, who could give a certified copy. He took it and we both walked round to the Recorder's office; he gave it to Mr. Richardson, the Recorder, and either he or I told Mr. Richardson I wanted a copy of it.

Ques. 5.—How came you to find that paper in the Mayor's office? and state, if you remember, among what papers you found it.

Ans. 5.—My recollection now is that I first went to Mr. Richardson, the Recorder of Santa Clara County, and asked him for a copy of the papers connected with the New Almaden mine. On examination he told me the papers were not in his office, and referred me to Mr. Belden, who had the greater portion of the old Alcalde papers. Mr. Belden went with me to his office, and opening an old wooden desk he overhauled some old papers in the desk and found this among them. I don't recollect the character of the other papers, except that there were other papers connected with other mines in the same bundle, one I remember was endorsed "Expediente of Chaboya's mine."

Ques. 6.—Did you look over or read the document that Mr. Belden discovered, and which was the object of your search?

Ans. 6.—I looked it over to see that it was the document we were in search of. I do not think that I read it all. I may and I may not have done so.

Ques. 7.—State what is your belief as to the identity of that document with the one produced by Mr. Houghton yesterday.

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Ans. 7.—I remember that the document so transferred purported to be the original "Expediente" of the mine of Santa Clara, containing the denouncement and juridical possession. I think this is the same, but I do not now remember the writing on the second leaf, being the third and fourth pages. I only remember the document from its general contents as I have mentioned, and the general appearance as compared with the one which I then saw, and which was then transferred to the Recorder's office.

Adjourned until 11 o'clock, Monday, Oct. 26, 1857.

San Francisco, Oct. 26, 1857.

Deposition of H. W. Halleck, a witness produced on behalf of the claimant, continued.

Present:—U. S. Attorney, by A. P. Crittenden, and A. C. Peachy for claimant.

Cross Examination.

Questions by U. S. Attorney.

Ques. 1.—Have you this morning read over all questions which were put to you on your *voire dire* and your answers to the same, and do you now repeat the same answers to each and every of those questions?

Ans. 1.—I have read them over; I think the answers are correctly taken down, except the 19th answer, on my *voire dire*. That answer should be "as long as both parties were satisfied during that year." I think I stated elsewhere that fact. With this correction I now repeat the same answers.

Ques. 2.- In your fifth answer on your direct examination, you say that you first went to Richardson, the County Recorder, and asked him for the papers connected with the New Almaden Mine; did you go alone?

Ans. 2.—I think I did.

Ques. 3.—Will you reflect upon that answer and endeavor carefully to remember whether you went alone or some one went with you?

Ans. 3.—I do not recollect of any one going with me, and my impression is that I went alone.

Ques. 4.—How long a time did Richardson take to make the examination for the papers of which you have spoken?

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Ans. 4.—Not more than a couple of hours, if so long as that.

Ques. 5.—Did you remain there with him and assist in that search? Did any one else assist in the seach, and, if so, who?

Ans. 5.—I think I assisted in looking over some of the old papers, which he laid on the table in his examination; I do not recollect any body else being present.

Ques. 6.—Did you go alone from the office of the Recorder to the office of Belden the Mayor? If any one went with you, who was it? Did you go on the same day that you made the search in the Recorder's office, and if not, on what day?

Ans. 6.—I think I went alone; I have no recollection now of any one going with me. My impression is that I went the same day. My impression also is that I found Mr. Belden in the building where the Legislature was in session, and went from there with him to his office; that is my present recollection of the matter.

Ques. 7.—Is your recollection that you went on the same day, and with Belden alone, as you have just stated, clear and certain?

Ans. 7.—It is not that I went the same day. It is pretty clear that there was no one with Mr. Belden and myself when we went to his office; but I cannot say positively.

Ques. 8.—How long did it take Mr. Belden to make the search before he found the paper?

Ans. 8.—My recollection is, only a short time. It may have been ten minutes, and it may have been half of an hour.

Ques. 9.—Did you assist Mr. Belden in the search. Did any body else join you, or did you find any body else there who assisted in the search?

Ans. 9.—I think that I assisted Mr. Belden in looking over the papers, as he took them out of the desk. I don't think any one else assisted, or was present.

Ques. 10.—Describe that desk.

Ans. 10.—I think it was a pine desk, with doors in front, which were locked; but I do not recollect particularly its appearance and shape otherwise than that. Nor am I certain that there were doors to it. My recollection is that I had to wait for Mr. Belden to go to his house to get keys, either to the desk or to the room.

I do not recollect the size of it. My impression now is that it was not more than five or six feet wide, nor more than six or seven feet high; it may have been larger or smaller. It was about the depth of the length of foolscap paper. I think it was not full of papers; my recollection is it was partially full of old papers; they were apparently assorted in bundles—at least a part of them.

Ques. 11.—What made you go to the office of Richardson in quest of that document?

Ans. 11.—I was making translations of papers connected with the

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mine, for the purpose of sending them to Mr. De La Torre, and I went to get a copy of those connected with the denouncement and juridical possession of the mine, in order to translate them.

Ques. 12.—Why did you suppose that you would find those papers in the office of the County Recorder?

Ans. 12.—Because I supposed the papers of the old Alcalde's office would be found in the Recorder's office.

Ques. 13.—Why did you suppose that you would find those papers in the old Alcalde's office?

Ans. 13.—Because I had seen a copy of such papers purporting to come from the Alcalde's office.

Ques. 14.—Can you produce that copy?

Ans. 14.—I think I can. I think it was the copy which I have already produced in the case, at the request of the Counsel who asked the question. I think I had also seen a copy signed by Chabolla.

Ques. 15.—Is the paper, which I now hand you, marked "Exhibit R. No. 2," attached to the deposition of James W. Weekes, a witness produced on behalf of the United States, taken before Special Commissioner J. E. Grymes on the 18th of Aug., 1857, and on file in this cause, a traced copy of that copy which you had seen, and of which you spoke in your last answer?

Ans. 15.—I think that this is a traced copy of one of the papers of which I have spoken. I mean of the first one of which I have spoken.

Ques. 16.—Have you any manner of doubt that this is a traced copy of the first copy of which you spoke?

Ans. 16.—I have none. It is endorsed in the hand-writing of Mr. Billings, and I have no reason to doubt but that it is a correct copy, although I do not recollect to have compared it myself.

Ques. 17.—Is not a copy of a writing another writing with the same words in the same order; and is this paper which you have just looked at, a copy of that which you found in the office of Mr. Belden?

Ans. 17.—The paper which I found in the office of Mr. Belden I only remember from the general subject matter of its contents, as purporting to be an original paper containing the denouncement and juridical possession of the mine. Whether it contained the same papers as in "Exhibit R. No. 2" referred to, or more or less, I cannot now remember. My recollection is that I did not examine it very minutely, or compare it with any of those copies of papers, to which I have referred.

Ques. 18.—In whose possession had you seen that copy purporting to come from the Alcalde's office, of which you spoke first?

Ans. 18.—I think I first saw it in a tin trunk of papers connected with New Almaden, in the hands of Isidoro De La Torre; but I cannot say positively that the original, of which "Exhibit R. No. 2," purports to be a copy, was the first I saw, or the other copy to which I

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have alluded. I may have seen them both at the same time, when he first showed me the papers.

Ques. 19.—Did you see that other copy, to which you allude, in the same tin box in the possession of Isidoro De La Torre?

Ans. 19.—I cannot say. I have seen both copies, and also another copy purporting to have been made in Mexico; but whether I saw them all there, or what one of them, when I first examined the papers in his possession, I do not now remember.

Ques. 20.—Did you, or not, see the copy made by Chabolla in the possession of Mr. De La Torre?

Ans. 20.—I do not remember whether I did or not.

Ques. 21.—In whose possession did you see it?

Ans. 21.—I have frequently seen it among the papers of the New Almaden Company, but I cannot say when I first saw it. My recollection is that I saw it as far back as 1850.

Ques. 22.—In whose possession had you seen the third copy made in Mexico?

Ans. 22.—Among the same papers. My recollection is that that copy was a certified copy of the original, of which "R. No. 2" purports to be a copy. That is my present recollection of it. That is, that it purports to be a copy of a certified copy, made by Weekes as Alcalde.

Ques. 23.—Then it purports to be a copy of "Exhibit R. No. 2," does it not?

Ans. 23.—I mean a copy of the same paper, of which "Exhibit R. No. 2" purports to be a copy, certified to by somebody in Mexico.

Ques. 24.—In whose custody were the New Almaden papers kept in the year 1850 and in the month of January, 1851?

Ans. 24.—When I first saw them in 1850, they were in the possession of Don Isidoro De La Torre—this was, I think, in March. In the latter part of the year they were in the custody of Wm. E. Barron; they were in his custody from the last of June. In the latter part of 1850, near the close of that year, I had them in our office, making translations, up to sometime in the latter part of the winter or spring of 1851.

Ques. 25.—At what time did you receive the papers, and when did you make your translations?

Ans. 25.—I can not remember the exact time that I received them, but think it was in the latter part of December, 1850. I am not certain, it may have been in November. I made translations at New Almaden, staying there most of the time for several weeks, and I remember that I was there on the first day of January, 1851. This is the only date by which I can now fix the time that I was engaged making the translation.

Ques. 26.—Were you engaged in making the translations, at the

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time when you went to Richardson, the County Recorder's office, to ask for the papers, and were you then staying at the New Almaden Mine?

Ans. 26.—That is my recollection.

Ques. 27.—Whom did you habitually see, when staying at the mine, of the persons interested in the mine, or engaged about it?

Ans. 27.—Mr. John Young, Mr. Bester, and the workmen at the Mine.

Ques. 28.—Robert Walkinshaw?

Ans. 28.—Very seldom. He did not then often go to the Mine.

Ques. 29.—Where did he then reside?

Ans. 29.—A couple of miles north of the Hacienda of the Mine.

Ques. 30.—Did you see James Alexander Forbes?

Ans. 30.—I do not recollect that I saw him during that time. He very seldom went to the Mine.

Ques. 31.—Where did James Alexander Forbes then reside?

Ans. 31.—In Santa Clara.

Ques. 32.—How far from the Mine? And does not the road from the Mine to San José pass through or near Santa Clara; and does not the road from the Mine to San Francisco pass through Santa Clara; and how far is Santa Clara from San José?

Ans. 32.—About fifteen miles from the Mine. The road from the Mine to San José runs no nearer to Santa Clara than when at San José. The road from the Mine to San Francisco does pass through Santa Clara. Santa Clara is about three miles from San José.

Ques. 33.—In 1850 and 1851 where was your residence and place of business?

Ans. 33.—San Francisco, after February, 1850. Prior to that in Monterey.

Ques. 34.—Were your visits to the mine frequent in 1850 and 1851?

Ans. 34.—They were.

Ques. 35.—What were your relations with John Young, Robert Walkinshaw and James Alexander Forbes, in 1850 and 1851? Did you see them frequently, and about how frequently?

Ans. 35.—My relations with John Young were intimate; with Walkinshaw and Forbes, merely that of acquaintance and recognition when I met them on the street. I saw Mr. Young very frequently, as often as once a fortnight generally. I very seldom saw either Forbes or Walkinshaw.

Ques 36.—Had you not on many occasions during the year 1850, and January, 1851, spoken to Mr. Forbes or Walkinshaw, on the subject of the affairs of the mine?

Ans. 36.—I think very seldom.

Ques. 37.—Did not Young, Forbes, or Walkinshaw, suggest to you

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that you might find in the office of the County Recorder the paper which you went there to seek?

Ans. 37.—It is possible that one of them might have done so, but I do not think that either of them did, for the reason that I do not think Mr. Young had any knowledge whatever of the papers of the mine, and I have no recollection of conversing with Mr. Walkinshaw or Mr. Forbes, at that time, on the subject. I don't remember that at that time either of them ever came to see me, or that I ever went to see them at that time.

I do not recollect to have been in the houses of either of them more than once or twice in my life.

Ques. 38.—Was not Mr. John Young interested in the mine in the year 1850, or employed about it in a responsible position by the New Almaden Company or the Lessees?

Ans. 38.—I do not think he was ever interested in the mine. He was employed by the Lessees as an overseer in working the mine. He was the principal overseer or local superintendant, which is a responsible situation.

Ques. 39.—Is not Mr. John Young a man of intelligence, and in whose fidelity to his employers you had confidence in 1850?

Ans. 39.—Yes, he is.

Ques. 40.—When you were on your visits to the New Almaden mine, did you not lodge in the same house with Mr. John Young, or very near him, and see him daily and nightly?

Ans. 40.—Yes.

Ques. 41.—Is it not strange under such circumstances that you had never communicated to Mr. Young any knowledge of the papers which constitute the title to the mine?

Ans. 41.—I probably had conversed with him somewhat in relation to them, but not very much, for I do not think he had, or has, ever read the papers, or has any particular knowledge on the subject. He is a sailor by profession, and has always manifested in conversation an ignorance of law matters, and a dislike of law subjects and lawyers.

Ques. 42.—What knowledge had you of the Spanish language in March 1850? Could you read it? Could you read Spanish manuscripts?

Ans. 42.—My knowledge of the Spanish language was imperfect, but I could read and translate Spanish manuscripts as well or better than I can now, being then more in practice reading Spanish.

Ques. 43.—Was it in March 1850, that you saw the paper of which "Exhibit R. No. 2." is a copy, and the Chabolla copy, and the third copy made in Mexico, of all of which you have spoken?

Ans. 43.—I think it was in March 1850, that I saw the New Almaden papers in the hands of Mr. De La Torre, and that I then saw one or more of the copies referred to; it may have been the first of April, but I think it was the latter part of March.

Ques. 44.—Did you not first see all of those copies about that time in

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the possespion of Mr. De La Torre? If you saw any one of them in possession of any body else, who was it?

Ans. 44.—I do not now recollect to have seen other copies than the three I have mentioned, or to have seen these except among the New Almaden papers, which I saw at that time in the possession of Mr. De La Torre, but I cannot say that all of these were then among those papers, or positively that elther one of them, but I remember seeing a copy or copies of the denouncement and juridical possession of the mine at that time, and was reading it over with Mr. De La Torre.

Ques. 45.—Did you understand it when you read it? Did you read all the papers and understand them?

Ans. 45.—I understood the general purport of the papers and my recollection is that I read all those relating to Castillaro's title. I think I examined papers connected with contracts and transfers of shares, but I do not think that I read the latter all through.

Ques. 46.—Was not Mr. De La Torre the same person whom you have said in 1850 and 1851, was a member of the new Almaden company, and one of the lessees of the mine?

Ans. 46.—He was.

Ques. 47.—Did he not then reside in the City of Mexico, or somewhere in the Republic of Mexico?

Ans. 47.—I think that he resided either in Mazatlan or the City of Mexico, but having no family, he may not have had any fixed place of residence. He was a partner in a house in Mexico.

Ques. 48.—The house of Mr. De La Torre was reputed to be very wealthy, was it not?

Ans. 48.—It was reputed to be very wealthy.

(Question and answer objected to by Attorney for Claimant, on the ground of irrelevancy.)

Ques. 49.—When did he arrive in California? When did he leave this State? and with whom did he leave the New Almaden papers?

Ans. 49.—I first saw him in California in the town of San José, I think in March 1850. I think he had arrived in California only a very short time before. He left the State I think on the first of July 1850, and left the papers in charge of Wm. E. Barron, as I have before stated, and from whom they passed to me, as I have before stated.

Ques. 50.—Have you retained possession of those papers from that time to the present?

Ans. 50.—I have not. They have been deposited a part of the time in the safe of Halleck, Peachy & Billings, and a part of the time in the vault of Bolton & Barron. A part of the time the key of the box containing them has been in my possession, a part of the time in

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Mr. Peachy's possession, and a part of the time in Mr. Wm. E. Barron's possession.

Ques. 51.—Where are they now?

Ans. 51.—A part of them are in the office of the Surveyor General, coming from the Land Commission. Most of them in the vault of Bolton & Barron. Some of them I thtnk are in the safe of Halleck, Peachy & Billings.

Ques. 52.—Have you not always had, and still have access to them when you desire it?

Ans. 52.—I have.

Ques. 53.—Will you produce and file with your deposition the Chabolla copy, and the copy made in Mexico, of the papers of denounce ment and juridical possession?

Ans. 53.—I will do so if requested, and the Counsel and Mr. Barron will consent to leave the papers on file.

(The Counsel for the United States requires the production of the Chabolla copy, and of the copy made in Mexico, of papers of denouncement and juridical possession, of which the witness has testified.)

Ques. 54.—In September, Octeber, November and December, of the year 1850, where were the papers of denouncement and juridical possession of the mine of New Almaden, being the same paper producedby Mr. Houghton?

Ans. 54.—I do not know.

Ques. 55.—Were they not to the best of your knowledge and belief in Mexico?

Ans. 55.—I have no knowledge of their being in Mexico, or of where they were. My belief is that they were in San José.

Ques. 56.—Have you a pretty good memory?

Ans. 56.—I have a pretty good memory of occurrences and of persons, but not a very good memory for names or dates.

Ques. 57.—During the time of which I have just enquired, did you not verily believe that they were in Mexico?

Ans. 57.—I did not. I had no reason to believe that they were in Mexico, and my reasons for believing that they were in San José are, that I found them there in 1851, as I have stated.

Ques. 58.—It is now seven years since the period of which I have questioned you. The human memory is treacherous. I therefore desire you to reflect well upon the answer you have just given. Do you answer in the same manner?

Ans. 58.—I have no change to make to my answer, except to say, as I have before said, that I cannot say positively that the paper pro-

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duced by Mr. Houghton, is the same found in Mr. Belden's office. I believe it to be the same, as I have before stated.

Ques. 59.—You regard the paper which you found in the office of Belden as the original denouncement and juridical possession of the mine of New Almaden, do you not?

Ans. 59.—I do.

Ques. 60.—In reference to that paper you then repeat the answer which you have given above, do you?

Ans. 60.—I do.

Ques. 61.—Did you not in the month of December, 1850, declare on oath, in a Court of Justice, that the original denouncement and juridical possession of the mine was at that time in Mexico?

Ans. 61.—I may have dene so. I had copies or a copy of that original denouncement and possession, and may have supposed then that the original, which is usually delivered to the parties, was in Mexico. I understand, and always have understood it to be the practice of Mexican Alcaldes, to make two originals of their judicial acts, one of which is made of record in their office, and the other delivered to the parties interested. I probably then supposed, as I have since, that a duplicate original had been given to Castillero and taken to Mexico. I remember to have written to Mexico to have such original sent to California, to be used in the litigation then pending.

Ques. 62.—Will you look at the 20th page of the document now handed to you, being the "certified transcript from the 3d Judicial District Court," filed in this cause on 21st August, 1857, and read the paper beginning at the bottom of that page, and say whether the same is or is not your affidavit?

Ans. 62.—I have read the paper referred to and think it is a copy of the affidavit sworn to by me at the time indicated in the paper; I think the affidavit was drawn by Mr. Peachy.

Ques. 63.—Look at the 10th page of the same document, read what is there written, and say whether or not your affidavit was made in answer to that demand?

Ans. 63.—I think it was.

Ques. 64.—What is the date of your affidavit, and what the date of the demand?

Ans. 64.—The date of the demand as it appears upon this paper, is the 13th Sept. 1850. And the affidavit purports to have been made the 23d December, 1850.

Ques. 65.—Would not the production in Court of the original, which you supposed had been retained by the Alcalde, have in every respect as fully satisfied that demand, as could the production of the other original, which you suppose had been carried to Mexico?

Ans 65.—I do not remember what was the supposition at that time. I do not now in looking over the demand, think that it would. One I

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regard as a record of title, and the other as a title paper delivered to the party. I regard the demand as for the latter. Only copies of these papers, to the best of my recollection, were in the hands of the Counsel in San Francisco, certified to, if I remember aright, by Notaries Public in Mexico, and under that demand they were required to produce the originals.

Ques 66.—Then you do not regard this paper produced by S. O. Houghton as a title paper of the claimant? Would it not serve as well for a title paper in one suit as in another?

(Question objected to by Attorney for Claimant on the gronnd that the questions asks the witness' opinion upon a matter of law.)

Ans. 66.—I do not regard it as the title paper which is usually delivered to the party, and therefore as not being the party's title paper. I regard it as the original record of a judicial act, and as having in Mexican law the same force and effect as the one delivered to the party, and sometimes even of higher effect where the original which is delivered to the party is impeached. I understand that, by Mexican law, any one impeaching the original that is delivered to the parties may bring forward the record for that purpose. That in such a case the record is the higher authority, that otherwise they are equal.

Ques. 67.—Do you not think this paper under Mexican, or any other law, would have had as much effect in 1850 as in 1857?

(Question objected to on the same grounds as to the preceding question.)

Ans. 67.—I do, of course.

Ques. 68.—What paper in this case do you regard as the title paper of the claimant?

(Question objected to on the same grounds as to the preceding question.)

Ans. 68.—I regard several papers in this case as title papers.

Ques. 69.—I mean with reference to the denouncement and juridical possession?

(Objected to as before.)

Ans. 69.—I regard the original record as a title paper, and also any duly certified copy of that original taken by an officer properly in charge of it. I speak now of what I understand constitutes title

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papers in Mexican law. I understand the duplicate original usually delivered at the time of the act or a "testimonio," or certified copy copy afterwards made, as equally a title.

Ques. 70.—Which paper in this case is a duplicate original, and which the "testimonio" of which you speak?

Ans. 70.—I do not understand that there is any duplicate original in this case; I never have seen one, and do not know whether or not one was issued to Castillero. I supposed that one had been issued, and have written to Mr. De La Torre and parties in Mexico to ascertain if there was not one there, and to send it to myself or the counsel in this case. I wrote to that effect in 1850. My recollection now is that the letters written at that time were never received by the parties to whom they were addressed; that is, I believe so.

(Attorney for United States withdraws the demand heretofore made to this witness for the production of the Chaballa Copy and of the copy made in Mexico of papers of Denouncement and Juridical possession of which the witness has testified.)

Ques. 71.—You have not yet answered which particular paper in the case you regard as the *testimonio* you have described?

(Objected to as before.)

Ans. 71.—I regard "Exhibit R., No. 2," before referred to, as a traced copy of a paper which would be called a *testimonio*.

Examination adjourned until to-morrow, Oct, 27, at 11, A. M., 1857.

San Francisco, Oct. 27, 11, A. M.

Examination of H. W. Halleck, a Witness Produced on Behalf of the Claimant, continued.

Present.—U. S. District Attorney, by A. P. Crittenden; A. C. Peachy, for Claimants.

Cross-Examination Continued.

Questions by U. S. Attorney.

Ques. 72.—When you found the paper in the office of Belden, were you not greatly astonished, and did you not speak of it to the parties interested in the mine as a great discovery?

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Ans. 72.—I do not remember that I was astonished. I probably spoke of it to Mr. Barron, and Messrs. Peachy & Billings. Whether I did to others or not, I do not remember. I may have done so. I do not think I spoke of it as a great discovery.

Ques. 73.—Nor as a remarkable, and most unexpected occurrence?

Ans. 73.—I do not remember to have spoken of it in such a way, nor to have regarded it as such. I considered it an important record as evidence of title.

Ques. 74.—Did the persons interested in the mine express astonishment or surprise at the discovery of that paper, or in any manner evince that they regarded it as a remarkable and unexpected occurrence?

Ans. 74.—I do not remember of conversing with any of them on the subject further than I believe I told Mr. Barron and Mr. Peachy that there was an original record which I had had transferred to the Recorder's office. I have no distinct recollection of any particular conversation other than telling Mr. Peachy when I left the State, or reminding him of there being a record in San José, in case he should want to use it before the Land Commission. I have no doubt that I told him and Mr. Barron, at the time that I discovered it in San José, of the fact.

Ques. 75.—Do you not positively remember that you did tell them the fact as soon as you saw them, after the discovery?

Ans. 75.—I am pretty confident that I did, but seeing them almost every day, and having conversed with them so often on matters connected with the mine, that I do not now recall to memory the particular circumstance and time of telling them.

Ques. 76.—Is your recollection and impression of having told them of this discovery in 1851, immediately after it was made, supported and confirmed by their recollections?

Ans. 76.—I have not asked either of them, and do not know what their recollections are.

Ques. 77.—You have of course seen Mr. Peachy or Mr. Barron, one or both, since your examination yesterday?

Ans. 77.—I have seen them both. I see Mr. Peachy now.

Ques. 78.—Did you obtain from Mr. Richardson, the Recorder, the certified copy you desired?

Ans. 78.—My recollection is that I did.

Ques. 79.—What did you want with it?

Ans. 79.—I was translating the papers connected with the mining title for Mr. Peachy's use, and also for the purpose of sending Mr. De La Torre copies of the translations. Mr. Robert Greenhow was employed by Mr. Barron about that time, or after that time, to look over the translations with me and correct them, and I think made separate translations of a portion.

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Ques. 80.—As you already had three copies in a tin box, why did you want a fourth to make your translations?

Ans. 80.—I have not stated that we had three copies; I have no recollection of having seen at that time more than one of the three which I described, but which one, or whether more than one, I do not remember.

Ques. 81.—Will you look at your 43d and 44th answers of your cross-examination, and say whether you have not there stated that the only recollection you have of the first time when you saw any or all of these three copies, or any other copies, of a denouncement, and juridical possession, was in the possession of Mr. De La Torre, in March or April of the year 1850?

Ans. 81.—I have looked at my answers 43d and 44th; I do not think my answers are as stated in the question, as I understand them, and as I think I meant to say. They mean this, that in March or April, 1850, I saw among the New Almaden papers in the hands of Mr. De La Torre, a copy or copies of the denouncement and juridical possession of New Almaden, but whether or not it was one of the three mentioned, I could not remember, otherwise than I had no recollection of seeing other than these three copies mentioned among such papers. I did not mean to be understood that I then saw all the New Almaden papers, or all three of these copies. Many papers were afterwards received from Mexico, and put in the same tin box.

Ques. 82.—I now repeat;—have you any recollection whatever of first seeing these three copies, or either of them, in any other place, or at any other time?

Ans. 82.—I remember to have seen them among the New Almaden papers on various occasions, but cannot remember when I first saw them all, or any one of them, otherwise than that a copy, or paper purporting to be a copy, was shown to me and examined by me in March or April, 1850. I remember it from the fact that Mr. De La Torre wished me to purchase an interest, and showed the papers to me, that I might examine them with reference to the title.

Ques. 83.—Please answer the 82d question Yes, or No.

Ans. 83.—I must answer as I already have done, that I do not remember the time when I first saw either of them.

Ques. 84.—Will you answer Yes or No, without qualification?

Ans. 84.—I answer No, if I fully understand the purport of the question.

Ques. 85.—Having already one copy certainly, and two others with no more doubt than appears in your answers 43, 44, and those just made, what necessity had you for any other copy in making your translations?

Ans. 85.—I do not remember of any particular necessity. My recollection however is that Mr. Peachy at that time, or before, had

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requested me to collect, and translate, all papers I could find connected with the Mine, for his use as Counsel; and I now think it probable that I searched in San José for papers for that purpose.

Ques. 86.—Why could you not have made the translations which Mr. Peachy wanted, from the copy, or copies, which you already had, without going to the trouble of the search which you made, to get another copy of the same documents?

Ans. 86.—I do not remember otherwise, than that Mr. Peachy wanted translations of all papers, that could be found, connected with the Mine. He may not at that time have had either the Weekes copy, or the Chabolla copy, of which I have spoken, or in addition to them, he may have wanted translations of whatever records there might be in San José; I do not now remember the circumstances particularly. It is very possible that he requested me to examine in San José for any records that might be found.

Ques. 87.—You have not answered my question. I did not ask you what copy or copies Mr. Peachy may have had, or if he had any; but why, having one or more copies yourself, you should have put yourself to the trouble of such a search for the purpose of obtaining still another copy from which to make your translations for Mr. Peachy?

Ans. 87.—I can give no other reasons than those already mentioned, for I do not remember any other.

Ques. 88.—Is it anything more than a guess that you wanted that copy for the purpose of making translations at all?

Ans. 88.—It is not a guess. It is my present recollection of what occurred years ago.

Ques. 89.—What became of the copy which you obtained from Richardson?

Ans. 89.—I do not remember positively, but my recollection is that it was burned, with all the copies and translations of papers which I had made, and which Mr. Greenhow had made, and with some others, which I had received from Mexico, when our office, books, and papers were burned in May, 1851.

Ques. 90.—Were all the papers of the New Almaden Mine burned at that time?

Ans. 90.—They were not. Most of them were in the vault of Bolton & Barron; those in our office were all burned.

Ques. 91.—Have those which were burned been since supplied?

Ans. 91.—I think most of the papers burned were copies and translations of papers in Bolton & Barron's vault. I remember one paper, a map, which was burned in our office, and of which duplicates were afterwards procured from Mexico.

Ques. 92.—When you say the papers burned were copies of others

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in the vault of Bolton & Barron, do you mean to include that copy which you obtained from Richardson?

Ans. 92.—I mean to say that I think that copy was burned. And I do not remember that Bolton & Barron had in their vault a copy of the same paper, or the original. I think they had a copy or copies of the denouncement and juridical possession, but not one made by Mr. Richardson, nor the original denouncement itself.

Ques. 93.—You say you think; do you mean you are not certain?

Ans. 93.—I mean that I never saw it there, and never heard of its being there.

Ques. 94.—Are you at all certain that that copy was burned at that time, or is it a mere guess?

Ans. 94.—I am not certain, nor is it a mere guess. My recollection is that it was burned. If my memory serves me right, I had a copy of it, and that it was burned with my other papers, for I have no recollection of seeing it after the fire, and I know that all the papers connected with New Almaden which I had in my possession at that time, were burned.

Ques. 95.—Of the four copies of which you have spoken, to wit,—the Weekes copy, the Chabolla copy, the copy made in Mexico and Richardson's copy, the last only was burned?

Ans. 95.—I have seen the first three since the fire, but do not remember to have seen the other. My recollection is that it was burned.

Ques. 96.—May it not have been sent to Mexico before the fire?

Ans. 96.—I have no recollection of its ever having been sent to Mexico. If it had been, I think I should remember it.

Ques. 97.—Do you not remember saying, in conversation, that you procured that copy for the purpose of sending it to Mexico, or of using it in Court on some trial?

Ans. 97.—I may have said in conversation that it was procured to be used in some trial; I do not think I could ever have said that it was procured to send to Mexico. I very probably have said that it was procured to send the translation and copy of it to Mr. De La Torre in Mexico. As I remember it was my intention in making these translations to send him copies of the translations and of the Spanish translated.

Ques. 98.—As at the time when you were engaged in making translations you believed that the parties in Mexico held the duplicate original, as you have already testified; your letters which you had written, asking for that duplicate original, having miscarried as you supposed, from receiving no answer to the same, and as good interpreters abound in Mexico, and several of the persons most largely interested are Englishmen by birth, long established in Mexico, and undoubtedly entirely familiar with both languages, what motive could

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you have had for desiring to send, or Mr. De La Torre for desiring to receive from California, a mere copy of that duplicate original, and an English translation of the same?

Ans. 98.—I was not then acquainted with any of the owners in Mexico, except Mr. De La Torre, nor was I in correspondence with any of them. My recollection of the letters written to Mexico for the original papers connected with the juridical possession to others than to Mr. De La Torre, were written by Mr. Barron, and that what I wrote to Mr. De La Torre on that subject was from a memorandum furnished me by Mr. Peachy. I do not remember that Mr. De La Torre asked for a copy or translation of any particular paper. I remember his proposing to me to translate the papers, and I think with reference to his selling stock in the Mine. The particular object of sending him copies and translations at the time indicated, was for the purpose of his taking the advice of counsel in the United States with respect to litigation then pending.

Ques. 99.—Did it not occur to you that he might sell stock and take advice of counsel, as well upon his duplicate original and upon translations which he could make himself, as upon the copy and translation that you were sending him?

Ans. 99.—I do not remember what occurred to me at the time. As Mr. De La Torre had recently become interested in the Mine and had left copies of papers connected with the Mine here, I may have thought that he had himself had none in Mexico. I cannot now say what I thought at the time.

Ques. 100.—Did you not suppose that he had obtained or could obtain this most valuable of all, of the same person or persons, from whom he got the tin box of papers, which he brought to California and left here? And if not, why was it, that you were writing to him for it, and Mr. Wm. E. Barron, at the same time, writing to others for it?

Ans. 100.—I cannot now say what I supposed at that time. My recollection is that all of the papers which Mr. De La Torre had here were copies. I cannot now remember the circumstances of my writing to him about it, otherwise than what I have usually written to Mexico about papers has been on a memorandum or copying a memorandum, given to me by Mr. Peachy, the Counsel. Having written often from memoranda by Mr. Peachy, I cannot remember particularly what was written at the time, nor the supposition I may have had then, as alluded to in the question.

Ques. 101.—Did it not look singular that you should furnish copies for him to sell stock and consult Counsel on, and he should furnish you originals to defend his title with, and all at the same time?

Ans. 101.—I do not think it did. His suggestion or request to me to make translations in California was, if I remember right, with reference to his selling stock here and in New York. Moreover, Mr. De

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La Torre was but one of the parties interested in the Mine, and I could not well have supposed that he had, from his suggestion, all the papers connected with it.

Ques. 102.—Do you consider that answer any explanation?

Ans. 102.—Explanation of what?

Ques. 103.—I mean do you consider that answer any explanation of the circumstances stated in my question 101, and of which circumstances I called for an explanation in that question?

Ans. 103.—I regard the question as asking my opinion, which I answered by the words, "I do not think it did."

Ques. 104.—About what number or quantity of papers, which you call the New Almaden papers, did Mr. De La Torre bring from Mexico?

Ans. 104.—I should think ten or fifteen documents; but as other documents were afterwards received from Mexico by Mr. Barron, and put with those left by Mr. De La Torre, some of which were duplicate copies of those left by him, I cannot remember them sufficiently well to distinguish in all cases, nor perhaps in most cases, between those I first saw in his hands and those which I have subsequently seen.

Ques. 105.—What additional papers, not duplicates,—I mean what number or quantity of additional papers, not duplicates, have since been received here; by whom sent; at what time; and what number or quantity at a time?

(Question objected to by Att'y for claimant, on the ground that it is examining the witness upon a point on which he was not examined in his examination in chief.)

Ans. 105.—I am unable to answer the question, as to the quantity, or times; I think all of them were received by Mr. Barron; I have no recollection of any one of them being sent to me. I think all or most were sent to him, by, or through the house of Barron, Forbes & Co., and Mr. E. Barron in Mexico. I think they have been received by him on several different occasions, and at several different times.

Ques. 106.—Among all these papers, brought or sent on different occasions during the last seven years, is it not strange that you have never seen the duplicate original which you consider the true title paper of the claimants, and for which you suppose you must have been writing, about the time you made your affidavit in 1850 (December,) and of the existence of which, or that such paper ever was issued, you have to this day no knowledge, as you have testified already?

(Question objected to on the ground that it asks the witness' opinion in regard to the strangeness of a certain state of facts; because it is immaterial, irrelevant and incompetent.)

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Ans. 106—I do not think it strange that I have never seen it among those papers, because I think I should have seen it if it had been there. I have thought it strange that no such document has been found or produced, for I have supposed that such a document must have existed.

Ques. 107—Did you know J. M. Jones, whose name is signed as attorney to the demand for the production of the original denouncement and juridical possession of the mine, to which your affidavit was an answer, the said demand being that made on the 13th September, 1850, and your affidavit and reply dated 23d December, 1850, concerning both of which you were examined and testified on yesterday?

Ans. 107—I did.

Ques. 108—Did you not become very well acquainted wit him as early as September, 1849, when you were both members of the Convention which formed the State Constitution?

Ans. 108—I first knew him as a member of the Convention alluded to, but never became very well acquainted with him; our acquaintance was never more than a speaking acquaintance; he is now dead.

Ques. 109—What was Mr. Jones' character for diligence, shrewdness, and general capacity, in his profession?

Ans. 109—I have generally heard him spoken of as a shrewd lawyer; with respect to diligence and capacity, I do not remember to have heard his character discussed sufficiently to form an estimate of it in my own mind.

Ques. 110—Do you not know that Mr. Jones was remarkably diligent, and considered of very good capacity?

Ans. 110—I was not sufficiently acquainted with Mr. Jones to judge either of his diligence or capacity otherwise than as a debater in the Convention.

Ques. 111—Is he not the same person who was counsel for James Alexander Forbes, of Santa Clara, in a suit brought against him by Robert Walkinshaw, in the latter part of August or in September, 1849, and in which Horace Hawes was attorney for Walkinshaw, before Alcalde May, of San José, and the same person who was attorney for James Alexander Forbes, et als., of the parties then interested in the mine, in a proceeding of the said Hawes denouncing the said mine before the Alcalde of San José, which proceeding in denouncement was pending at the same time with the suit brought by Walkinshaw against Forbes as above stated, and which said suit was for the possession of the mine?

Have you not learned that he was, from himself, from Forbes, or Walkinshaw, or others interested in the mine, or from any other person, or in any other manner?

(So much of the preceding as asks the witness what he has heard other people say, objected to by attorney for claimant, on the ground that is hearsay.

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And the whole question objected to by attorney for claimant, on the ground that it is immaterial.)

Ans. 111—I believe he was the same person; I resided in Monterey at that time, and had no personal knowledge of the matter alluded to; my rcollection is, that Mr. Jones came to Monterey sometime in the latter part of 1849, on some business connected with such suits; I think he told me so himself; I think I have heard Mr. James Alexander Forbes speak of his having been his counsel in such cases; I do not remember who was the Alcalde, nor what information I had at the time on the subject, otherwise than general rumor.

In a word, I have no doubt but that Mr. Jones is the same man.

Ques. 122—In your seventh answer on your direct examination, speaking of the paper which you found in Belden's office, you say, "I remember that a document so transferred purported to be the original expediente of the mine of Santa Clara, containing the denouncement and juridical possession"—was that document endorsed "expediente"?

Ans. 112—I do not remember what was the endorsement.

Ques. 113—What do you recollect about the endorsement?

Ans. 112—I do not recollect about the endorsement; I used the word expediente, in the seventh answer, as descriptive of the character of the document referred to, and not with respect to the endorsement. I used the word as I am accustomed to use it, and to hear it used, with respect to documents in the old "Archives" now in the possession of the Surveyor General.

Examination adjourned until Friday, 30th Oct., 1857, at 11 A. M.

San Francisco, October 30, 1857.

Counsel for the respective parties not being present, examination adjourned until to-morrow, Saturday, October 21, 1857, at 11 o'clock, A. M.

San Francisco, October 31st, 1857—11 A. M.

Present: A. C. Peachy, for claimant, and the witness, H. W. Halleck.

The Attorney for the U. S. not being present, examination adjourned until Monday, Nov. 2d, 1857, at 11 A. M.

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SAN FRANCISCO, Monday, Nov. 2, 1857—11 A. M.

Cross-Examination of H. W. Halleck, a witness produced on behalf of the claimant, continued.

Present: U. S. District Attorney, by A. P. Crittenden; A. C. Peachy for the claimant.

QUESTIONS BY U. S. ATTORNEY.

Question 114—In your last answer, you speak of Mexican Archives, —relating to what subject?

Answer 114—I mean the archives of the former government of California, which are now in the possession of the Surveyor General, they mainly relate to land titles; some relate to the proceedings in Courts, to matters connected with the Missions, Custom-house, &c.

Ques. 115—What do you understand by an expediente of a title?

Ans. 115—I understand the collection of papers connected with the application for a title, and the proceedings thereon.

Ques. 116—Then you regard the paper which you found in Belden's office, as the office record of the expediente of denouncement, and juridical possession of the Santa Clara mine?

Ans. 116—I did.

Ques. 117—Do I understand that you do not so regard it now?

Ans. 117—I regard it now the same as I did then.

Ques. 118—Why did you not file a copy of this paper with the claimant's petition in this case?

Ans. 118—I do not remember any other reason than my filing a copy of papers in my possession at that time; original papers were not usually filed with the petition.

Ques. 119—Why did you not file a copy of the expediente of your title; why did you file as the exhibit of your title, a paper which was not a copy of your title; before filing exhibits of title, did you not usually take some care to see that the paper filed was a copy of your titles?

Ans. 119—I do not remember why a copy of the expediente was not filed; sometimes copies of expedientes of titles were filed with the petitions, but more frequently I think they were not. Petitions were sometimes filed with the Board of Commissioners without my having seen the original titles, they being still in the hands of the claimants. I do not remember in this case the particular circumstances; I did not have the general direction, charge, or responsibility of the case before the Commission; that belonged to Mr. Peachy.

Ques. 120—Can you give no explanation why "Exhibit A" to the petition filed as the exhibit of claimants' title, is not a copy of the pa-

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per which you have just said was the expediente of the claimants' title, but an entirely different paper?

Ans. 120—I did not know that there was any difference between the contents of "Exhibit A" and the expediente referred to, until after the case was appealed to this Court; at any rate I do not recollect of having heard of a difference, or to have examined the papers before the case came to this Court. I was not in California when the expediente referred to was produced and proved in the Commission.

Ques. 121—What is the endorsement on "Exhibit A," as now on file, being the paper produced by claimants, and put on file in pursuance of the stipulation thereon endorsed, to supply the place of the "Exhibit A," which has been lost from the record, being the Spanish, of which "B" in the transcript from the Board of Commissioners, is the translation?

Ans. 121.—The endorsement on first page of traced copy of "Exhibit A.," as referred to in the question, is as follows:

"Año de 1845.

"Expediente del denuncio posesion y compañia de la mina de azogue nombrada Santa Clara Jurisdicion de San Jose Guadalupe en la Alta California."

Ques. 122.—What was the endorsement on the paper which you found in Belden's office?

Ans. 122.—The endorsement on the first page of the paper here produced by Mr. Houghton, and which I believe to be the same which I found in Mr. Belden's office, is:

"Posesion de la Mina de Sta Clara.

"Ano de 1845."

Ques. 123.—Do you know the hand writing of both of those endorsements?

Ans. 123.—I do not know the hand writing of the endorsement on the last named paper; the endorsement on the first named paper I believe to be in the hand writing of James Alexander Forbes.

Ques. 124.—Do you know the hand writing of the body of the last named paper, throughout, down to the signature of James W. Weekes; if so, whose is it?

Ans. 124.—I believe the original, of which this last named paper is a traced copy, is all in the hand writing of James Alexander Forbes, to the signature of James W. Weekes.

Ques. 125.—What is the first document in the paper which you

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found in Belden's office; what does it purport to be; by whom signed; what the marginal order in effect, and by whom signed?

Ans. 125.—It is a petition to the Alcalde of San José, purporting to be signed by José Castro, with an endorsement on the margin, purporting to be signed by Pacheco. The petition is dated June 27, 1846, and the marginal endorsement is dated, I think, June 29, 1846.

Ques. 126.—Does that document, being the said petition and marginal order, exist in the exhibit of the expediente of your title, filed with the petition?

Ans. 126.—It does not appear in the traced copy of the document "Exhibit A.," being the same produced and filed under stipulation aforesaid.

Ques. 127.—What is the next document appearing in the paper which you found in Mr. Belden's office?

Ans. 127.—The next paper in the document produced by Mr. Houghton, and which I believe to be the same which I found in Mr. Belden's office, purports to be a petition from Andres Castillero to the Alcalde, dated November 22d, 1845.

Ques. 128.—At what place?

Ans. 128.—At the Mission of Santa Clara.

Ques. 129.—Is not the first paper in "Exhibit A.," produced as aforesaid, the same petition of Castillero?

Ans. 129.—It purports to be a copy of the same paper, down to the name Andres Castillero.

Ques. 130.—At what place is it dated?

Ans. 130.—It is dated the Pueblo of San José Guadalupe, November 22d, 1845.

Ques. 131.—After the signature of Andres Castillero, what follows next?

Ans. 131.—The words, "Es copia a la que me remito firmando la con dos testigos de asistencia en el pueblo de San Jose Guadalupe a 13 de Enero de 1846—Pedro Chabolla=de asistencia P. Sainsevain de as^{a} José Sunol."

Ques. 132.—Are those words to be found in the document which you found in Belden's office?

Ans. 132.—I do not find them on that document.

Ques. 133.—What is the next paper in "Exhibit A.," and the document from Belden's office, respectively?

Ans. 133.—The next paper in the latter purports to be a petition to the Alcalde, dated Santa Clara December 3d, 1845, and signed Andres Castillero. The next paper in the first named document purports to be a copy of the same paper.

Ques. 134.—In "Exhibit A." what follows next after the words Andres Castillero?

Ans. 134.—The words "Es copia a la que remito firmando la con

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los testigos de mi asistencia en el Pueblo de San José Guadalupe a 13 de Enero de 1846—Pedro Chabolla=de as[a] P Sainsevain de as[a]. José Suñol."

Ques. 135.—Are those words found in the document from Belden's office?

Ans. 135.—I do not so find them.

Ques. 136.—What is the next paper in "Exhibit A.," and the document from Belden's office, respectively?

Ans. 136.—The next paper in both purports to be the juridical possession of the mine of Santa Clara by Antonio Maria Pico, dated, in the former, December 30th, 1845, and in the latter, December 1845. Each of them have "de as[a] Antonio Suñol, de as[a] José Noriega."

Ques. 137.—Then the act of juridical possession is not dated of any day, but only the month of December, 1845, as that act appears in the document from Belden's office?

Ans. 137.—It so appears in that document.

Ques. 138.—And in "Exhibit A." the same act is dated the 30th day of that December?

Ans. 138.—It is so.

Ques. 139.—In "Exhibit A." what follows next after the words, "Antonio Maria Pico, de as[a] Antonio Suñol, de as[a] José Noriega?"

Ans. 139.—The words, "He recibido del Sr D Andres Castillero la cantidad de veinte y cinco pesos por cuenta de los derechos de posesion de la Mina de Azogue que está en esta Jurisdicion de mi carga nombrada de Santa Clara Jusgado de San José Guadalupe, Decembre 30 de 1845. *Antonio Ma Pico.*"

Con 25 pesos.

Ques. 140.—Are those words found in the document from Belden's office?

Ans. 140.—They are not.

Ques. 141.—What paper comes next in "Exhibit A.?"

Ans. 141.—A paper purporting to be a copy of articles of partnership between Andres Castillero, Jose Castro, Secundino Robles, Teodoro Robles, and Jose Maria del Refugio Suares del Real, in a mine of silver, gold, and quicksilver, for working the mine. This paper bears date, Mission of Santa Clara, 2d November, 1845, and the copy to have been made atSanta Clara, December 8th, 1845, &c.

Ques. 142.—Is that paper to be found in the document from Belden's office?

Ans. 142.—It is not.

Ques. 143.—The papers you have examined in "Exhibit A.," and in the document from Belden's office, constitute the whole of that exhibit, and that document, with the exception of sundry endorsements, and of sundry certificates attached to "Exhibit A.," do they not.

Ans. 143.—They do. I have not compared them with each other,

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with respect to the contents of each paper, but they purport to be as I have mentioned.

Ques. 144.—Of "Exhibit A.," and of the document from Belden's office, how much was put in proof before the Land Commissioners? Was it any more than the first and second petitions of Castillero, and the act of juridical possession, dated without day, in December, 1845, as the said petitions and act of juridical possession appear in the document from Belden's office, omitting all else contained in "Exhibit A." or in the document from Belden's office?

To answer this question you may examine the transcript from the Land Commissioners, and I refer you to the depositions of Antonio Suñol and Frank Lewis, with the exhibits thereunto attached.

(Question objected to as not being proper on the cross-examination.)

Ans. 144.—I was not in California when the testimony referred to was taken, and I do not remember even to have examined the testimony and papers referred to in the archives of the Land Commission; the papers themselves referred to in the question will afford the answer.

Ques. 145.—After the letters which you had written to Mexico, to Mr. De La Torre, or others, requesting them to send you the original denouncement of the Mine of New Almaden, and the juridical possession given of the same in the year 1845, as you alleged in your affidavit, filed in the District Court of the third Judicial District, December the 23d, 1850, in the suit then pending therein, between Maria Bernal de Berreyesa et als. vs. James A. Forbes and Robert Walkinshaw, concerning which affidavit you have been herein before questioned, did you write other letters of the same purport to Mr. De La Torre, or to other persons interested in tne mine?

Ans. 145.—I probably did; but as my letters relating to matters connected with the titles to New Almaden, were written on memoranda, or transmitting memoranda furnished by Mr. Peachy, as counsel for the mine, I did not very particularly charge my mind with the matter, and do not now remember what was written, or when.

Ques. 146.—Then you are entirely uncertain whether you ever wrote any more such letters, or whether you ceased to write them after the discovery in Belden's office?

Ans. 146.—I frequently wrote to the parties in Mexico respecting the operations of working the mine, and sometimes inserted in my letters the substance of memoranda furnished by Mr. Peachy, or transmitted them, in relation to the titles. I am very certain of having written after the time mentioned with respect to the titles, but I cannot now remember when or what I wrote.

Ques. 147.—Have you no more specific recollection of the nature of

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your correspondence on the subject of the papers you had written for, when you made your affidavit, or on the subject of the important discovery which you had made in Mr. Belden's office?

Ans. 147.—Perhaps I might remember more particular circumstances if the questions were more specific, or if any particular matter were now brought to my mind. I think about 1851 I ceased corresponding with Mr. De La Torre, with respect to these matters, and I believe most of the correspondence with respect to titles or title papers was carried on through Mr. Wm. E. Barron, and the house of Barron, Forbes & Co., in Mexico, by Mr. Peachy.

Ques. 148.—The specific question which I desire to ask, and the particular matter to which I would call your attention is, whether you did or did not continue to write to persons in Mexico letters of a like purport with those referred to in your affidavit aforesaid, after the date of that affidavit, and after the discovery of the document in the office of Belden?

Ans. 148.—I do not now remember that I afterwards wrote with respect to the particular matter or papers referred to.

Ques. 149.—After your correspondence ceased with Mr. De La Torre, on the subject of the titles of the mine, did you enter into correspondence with any other of the parties interested in the mine on that subject?

Ans. 149.—I did not, except as incidentally in my correspondence, as connected with my own particular duties in working the mine. By incidentally, I mean in the manner I have before stated.

Ques. 150.—Were you not cognizant of the nature of the correspondence conducted by Mr. Peachy and Mr. Wm. E. Barron, with the house of Barron, Forbes & Co., as you have mentioned, on the subject of the title to this mine?

Ans. 150.—I was, generally, when in San Francisco.

Ques. 151.—Did they continue to write letters of the purport of those referred to in your affidavit of December 23d, 1850.

Ans. 151.—My recollection now is that no answers to the letters referred to in that affidavit were for a long time received, and it being supposed that the letters were miscarried or lost, other letters of the same purport were sent via New York, on account of the difficulties or disturbances on the western coast of Mexico.

Ques. 152.—When and by whom were these other letters written?

Ans. 152.—I do not remember the time, but my recollection now is that such other letters were sent by Mr. Wm. E. Barron, or that I was so informed at the time.

Ques. 153.—Were the letters sent by Mr. Barron before the date of your affidavit, or between that and the discovery of the document in Belden's office, or after that discovery; were they of the letters written by you, or of those written by Mr. Peachy and Mr. Barron, after you had left the correspondence to them?

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Ans. 153.—I do not remember with respect to the time, nor do I remember to have written at that period, or near that period, to any one in Mexico with respect to the titles of the mine, other than to Mr. De La Torre, or, in the incidental way I have mentioned, in my reports to Barron, Forbes & Co. of the operations in working the mine.

Ques. 154.—The letters which you supposed miscarried were received were they not, as you afterwards had reason to believe?

Ans. 154.—I do not remember; documents connected with the title papers were afterwards received by Mr. William E. Barron, but whether in answer to the first or subsequent letters I do not remember. I think that the documents received by him were in his possession a long time before I read or examined them.

Ques. 155.—As you had written for certain documents, and were so much connected at that time particularly with the mine and its interests, was it not strange that Mr. Barron should receive documents, and keep them a long time without showing them to you, and especially as you had filed an affidavit in so important a suit, declaring that you were expecting to receive documents, and implying a promise to produce them in Court?

Ans. 155.—He very probably informed me at the time of his having received the documents, and probably showed them to me, but I do not remember of examing them particularly at that time. Between the time that I translated the papers which were here in 1850 and 1851, and the time I translated papers to be filed in the Land Commission, I do not remember of particularly examining the papers in Mr. Barron's possession. As Mr. Peachy had charge of the litigations pending, I may have read or translated for him some particular papers; not charging my mind with it I do not remember.

Ques. 156.—You have testified that you suppose that in your affidavit, you must have referred to a duplicate original which you suppose must have been in Mexico, and which you regarded as the true title paper of the denouncement and juridical possession; does it not seem to you strange that you should now be so entirely uncertain whether you continued to write for it or not, whether Mr. Peachy continued to write for it or not, that you did not think it of sufficient importance to examine the papers received by Mr. Barron from the house of Barron, Forbes & Co., in order to ascertain whether it was among those papers or not, and yet your affidavit was on file in which you had entered under obligations to produce it if possible In the suit then pending in that Court, (the Third District Court of California,) and which suit continued pending for more than a year thereafter in the same Court, when it was transferred to the United States District Court, and in view that the orignal title paper has continued of the same importance and necessity to the interests of the claimants of the mine from December, 1850 up to the present day?

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Ans. 156.—The affidavit referred to was drawn up, to the best of my recollection, by Mr. Peachy, and sworn to by me because I was then frequently in San Jose. The matters sworn to were undoubtedly within my own knowledge, but not being the person charged with these matters I cannot now remember particularly what papers are referred to, or what papers I afterwards saw relating to the subject.

It is by no means strange that I do not now remember circumstances with which I would not have been likely at the time to charge my mind.

Ques. 147.—I do not well understand how this affidavit and the circumstances connected with it, before and after, are matters with which you would not be likely to charge your mind. Will you explain?

Ans. 157.—I do not see anything in this question requiring an answer.

Ques. 158.—Was the affidavit to which I referred—I mean your affidavit of the 23d of December, 1850—prepared in San Francisco, or in San Jose? was it in your handwriting, or in that of some one else, to the best of your recollection?

To the best of my recollection it was prepared by Mr. Peachy in San Francisco; if in my handwriting, it was copied by me from his draft. I think Mr. Peachy drew every paper connected with this litigation then pending. I am quite certain that I never prepared any one of the papers, although I may have copied some.

Ques. 159.—When you carried the document from Belden's office to the County Recorder's office, did you leave it there?

Ans. 159.—I did, or Mr. Belden left it.

Qus. 160.—When was the next time that you saw that document?

Ans. 160.—I have no recollection of seeing it afterwards until it was produced by Mr. Houghton in the Circuit Court, U. S., in this place, about a year ago, and then did not particularly examine it.

Ques. 161.—Who was Governor of California in April 1848?

Ans. 171.—Colonel Richard B. Mason.

Ques. 162.—Where were you at that time?

Ans. 162.—To the best of my recollection I was on the coast of Lower California, or at Mazatlan, about the first of April, 1848. I arrived at Monterey some time during the month of April, 1848, or the first part of May, 1848.

Ques. 163.—Were you not in Monterey in 1847?

Ans. 163.—I was, part of the year.

Ques. 164.—What time in 1847?

Ans. 164.—From some time in January, to about October, the greater portion of the time.

Adjourned until to-morrow, Tuesday, November 3d, 1857, at 11 A. M.

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San Francisco, November 3d, 1858, at 11 A. M.

Cross Examination of H. W. Halleck, a Witness produced on behalf of the Claimant.

Present:—The U. S. District Attorney, by A, P. Crittenden; A. C. Peachy for Claimant.

Ques. 165.—Who was Secretary of State for California in 1848.

Ans. 165.—I was.

Ques. 166.—At what time were you appointed Secretary of State, and how long did you hold the office?

Ans. 154.—I was appointed in 1847, in the summer. I think my commission dated in August. I acted as such some weeks before the commission was made, and continued to hold the office till the latter part of December, 1849.

Ques. 167.8–When did you first learn of the existence of the mine now called New Almaden?

Ans. 167.—I think in the month of March, 1847; I very likely may have heard of it before, but this was the first time I now recollect of hearing it talked about.

Ques. 168.—From whom did you hear of it at that time, and what circumstances particularly brought it to your notice?

Ans. 168.—On the road between San Luis Obispo and Santa Barbara, I met Mr. Robert Walkinshaw, who told me he had landed at Santa Barbara, and was on his way to New Almaden to take charge of the quicksilver mine; that a vessel with tools, &c., for working it was on its way to Monterey, or was expected at that place. I remember the fact from his giving me some information connected with the war in Mexico, and he said he had dispatches for the Commodore of the American squadron.

Ques. 169.—For whom was he going to take possession of the mine?

Ans. 169.—I do not remember that he mentioned, or the particulars of his conversation. My impression is he said he was going as agent or superintendent.

Ques. 170.—Did he not say as agent or superintendent for whom, or have you not since learned? Have you not learned who sent the agent, or the vessel with tools?

Ans. 170.—I do not remember that he mentioned at that time for whom he was going as agent. I think I did soon afterwards learn, at Monterey, from him or from Mr. Alden, that they were acting for parties in Mexico, among whom I think were mentioned Castillero, Alexander Forbes, or the house of Barron, Forbes & Co.

Ques. 171.—Who had charge of the mine as agent, or as superin-

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tendent, in the year 1847, to the best of your information, knowledge and belief ?

Ans. 171.—To the best of my information and belief, Mr. Robert Walkinshaw ; I do not remember that I had any positive knowledge of the matter. I do not think I was at the mine during that year.

Ques. 172.—But you entertain in your own mind no doubt of the fact that he was ?

Ans. 172.- I remember that Mr. Alexander Forbes was in Monterey about September, 1847, on his way to the Quicksilver mine. When he left California I do not know as I was absent from this part of the country in the latter part of 1847 and the forepart of 1848. He may have taken charge of the mine while he was in this country.

Ques. 173.—Otherwise you have no doubt that during that time Mr. Walkinshaw was in charge.

Ans. 173.—Perhaps James Alexander Forbes may have been in charge some portion of that time ; not knowing I cannot say as to the fact. Where one of the two persons mentioned were not in charge, I have no doubt that Mr. Walkinshaw was in charge.

Ques. 174.—Is Mr. Walkinshaw the same person whom you have mentioned as one of the owners of the mine ?

Ans. 174.—He is.

Ques. 175.—Will you take the book now handed to you, entitled " California Message and Correspondence, 1850," and look at the letter in document 17, page 551, of said book, and state briefly what it is, from whom, to whom, apparently upon what subject &c.?

Ans. 175.—It is a letter dated Monterey, April 17th, 1849, signed by R. B. Mason, Col. 1st Dragoons, Commanding, and is directed to Charles White, Alcalde, Pueblo de San Jose, and purports to be an answer to a letter from the latter, and to have reference to the denouncement of some mine.

Ques. 176.—Look under the 553d page and give me the words of the last paragraph ending on the 554th page.

Ans. 176—The words are: " The mining laws give to the de-
" nouncer of a new vein in a ' known mountain,' that is a mountain
" known to contain the named mineral, ' two appurtenances ;' and to
" those who work in company, four new appurtenances—an appur-
" tenance being 200 Spanish varas in length, and from 100 to 200
" varas in breadth, according to the dip or inclination of the vein.
" This denouncement of the 17th of December being a new vein, if
" any, in mountains known to contain quicksilver ore, entitled the par-
" ty to but two appurtenances ; but working in company entitled them
" to ' four new appurtenances,' making six in all, (though it is said by
" Mr. Walkinshaw, a practical miner of great experience and intelli-
" gence, that in Mexico the law is so construed, and such the invaria-
" ble practice there, that a company is only entitled to four appurte-

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" nances in all.) Now, an appurtenance being two hundred varas long, " and its greatest width under the most favorable circumstances, two " hundred varas wide, it follows that six appurtenances cannot contain " more than 240,000 square varas. The magistrate put the party in " possession on the 2d of February of a given space of land, including " the hole they had dug, measuring, if I remember rightly your read- " ing from your record when I was at the Pueblo on the 12th, 600 " varas one way by 800 varas the other, making the area to contain " 480,000 square varas—just 240,000 square varas more than he was " authorized by law to put them in possession of, even supposing that " they had fulfilled all the requirements of the law to entitle them to " possession. The possession given on the 27th of February was there- " fore illegal, the magistrate greatly exceeding his judicial powers. " The judicial acts of a magistrate can only confer rights on one party, " or take them from another, so long as he confines himself within the " limits of the law has assigned to him. As soon as he steps beyond those " limits his judicial acts are at once stripped of all binding force and " effect, and have no more legal force than if performed by any other " individual."

Ques. 177.—Is not the Mr. Walkinshaw mentioned in that paragraph, the same of whom you have spoken in this examination?

Ans. 177.—I presume he is, but I do not know, as I was not in Upper California at the time this letter bears date, and I know nothing of my own knowledge as to what Walkinshaw the letter alludes.

Ques. 178.—You have no reason to doubt that he is the same person?

Ans. 178.—I have known no other Mr. Walkinshaw in California, and therefore presume he must be the one alluded to.

Ques. 179.—What is the extent of the juridical possession alleged in this case to have been given to the claimant in 1845?

Ans. 179.—To the best of my recollection, it is 3,000 varas in all directions.

Ques. 180.—Do not such words of description in Spanish grants or official concessions, when applied to land, signify a square on the double of the distance given? Do you not understand the words in this case to mean the square of 6,000 varas?

Ans. 180.—I have so understood the words used. I must remark, however, that others to whom I have submitted the words for interpretation think they mean a circle.

Ques. 181.—If they mean a square, would it not contain exactly 900 appurtenances, or pertenencias, each of 200 Castillian varas square? If they mean a circle, would it not contain more than 700 appurtenances of the said description?

Ans. 181.—I have not made the calculation alluded to in the question, and therefore cannot answer it.

Ques. 182.—A square of 6,000 varas contains 36,000,000 square

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varas. A pertenencia or appurtenance 200 varas square contains exactly 40,000 square varas. Are not 40,000 contained exactly 900 times in 36,000,000 ?

Ans. 182.—I have not made the calculation, but presume the counsel is a sufficiently good mathematician to divide one quantity by another, and to deduce a correct result, provided the quantities are not too large.

Ques. 183.—Your last answer is doubtless very good wit, and you have a right to make it; will you now explain, if you can, how, in 1848, Mr. Robert Walkinshaw, an owner in the mine, Superintendent and Agent in possession, as this case alleges, of the enormous quantity of 900 pertenencias or appurtenances, should say to Col. Mason, "that in Mexico the law is so construed, and such the invariable practice there that a company is only entitled to 4 appurtenances in all?"

Ans. 183.—I do not know what Mr. Walkinshaw told Col. Mason in 1848, nor is it my business as a witness to reconcile any contradictions of Mr. Walkinshaw's assertions and conduct.

Ques. 184.—As Secretary of State, did not your duties relate to the civil branch of the Government? Did you, or did you not, have charge of the public Archives of the Government in Monterey?

Ans. 184.—They did. And I had such charge when in Monterey.

Ques. 185.—You of course regarded the charge of the public archives as a responsible trust, and kept them safely, did you not?

Ans. 185.—I did so regard them, and did so endeavor to keep them safely.

Ques. 186.—Under no circumstances would you permit any person to carry away any of the papers constituting these archives, or to add new papers to them;—did you?

Ans. 186.—Under no circumstances did I allow any one, except the Clerk in my office, to have access to the Archives, while I was in charge, (with the exception I will add of Wm. Carey Jones, and his Clerk, Bayard Taylor, in 1849, and then only by the order of Gov. Reilly, under some instructions from the Government at Washington.) I never allowed any person to move a document from the archives or to deposit one in the archives without endorsing upon it the date of filing and by whom deposited.

Ques. 187.—The Clerk or Clerks whom you had employed in care of the archives in 1847 were honorable men and observed the same rule which you followed yourself, to the best of your knowledge and belief? Is it not so?

Ans. 187.—They were, and did.

Ques. 188.—When Mr. Alexander Forbes arrived in Monterey in the year 1847, did he lodge any document among the public archives?

Ans. 188.—None, to my knowledge.

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Ques. 189.—From the rules of your office and the character of your employees, as you have stated, have you any idea, even the least, that he did lodge in the public archives any document?

Ans. 189.—I have no recollection of ever seeing any document lodged by him, nor have I any knowledge that any was ever so lodged. My recollection is, that I left Upper California soon after his arrival at Monterey.

Ques 190.—From anything which happened at the time of his arrival, and before your departure, or which came to your knowledge after you returned from the lower country, and resumed your duties and the charge of the papers, have you any knowledge or belief whatever that Mr. Alexander Forbes did, when in California, lodge any document among the public archives at Monterey?

Ans. 190.—I have no knowledge that he did, and have no reason for believing that he did. My recollectien now is, that he called upon the Governor and the Commodore of the Squadron in Monterey, and exhibited to them some papers connected with the mine, or the use to be made at the mine of the contents of a cargo of a small vessel which had arrived at Monterey, and which was either seized or intended to be seized as Mexican property. I have no recollection of seeing the papers, or what was done about the cargo or the vessel. I think this was about the time I left for the lower coast. I am quite certain that I was not called in consultation in the matter, or I should now recollect more particularly.

Ques. 191.—This Mr. Alexander Forbes was the senior partner of the house of Barron, Forbes & Co., of Tepic, was he not?

Ans. 191.—He was a partner of that house, but whether the senior or not, I do not know.

Ques. 192.—Does that house still exist? Has it always been reputed a very wealthy house?

Ans. 192.—The house of Barron, Forbes & Company still exists, but I believe Mr. Alexander Forbes ceased to be a member of it some years ago. It is reputed to be wealthy.

Ques. 193.—When you became acquainted with Alexander Forbes was he not then a very old man; and do you know whether he was alive or dead at the date of the last news concerning him?

Ans. 193.—When I first saw him in Monterey in the summer of 1847, he was quite an old man. I have never seen him since that period. I believe he is still living.

Ques. 194.—Where?

Ans. 194.—I think somewhere in England. I am under the impression that he is now living with his brother, Dr. John Forbes, in the city of London.

Ques. 195.—Did you ever see Andres Castillero, the claimant?

Ans. 195.—I never did to my knowledge.

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Ques 196.—Did you ever correspond with him ?

Ans. 196.—I have no recollection of ever writing to him, or of receiving a letter from him.

Ques. 197.—Did the firm of Halleck, Peachy & Billings ever correspond with him ?

Ans. 197.—Not to my knowledge or present recollection.

Ques. 198.—You have not mentioned him as one of the owners or lessees of this mine. Does he, or not, still hold any interest in the mine ? If he has parted with his interest, when, and to whom ?

Ans. 198.—I understand that he was the original lessor, and that he afterwards sold out the part or the whole of his interest in the mine. I do not know the particular times when, or the immediate persons to whom he sold.

Ques. 199.—Have you not good reason to believe, and long entertained the belief that he had sold all his interest to Alexander Forbes, or Barron, Forbes & Co., or others of whom you have mentioned as the owners of this mine, and before the year 1849 ?

Ans. 199.—I have no positive knowledge that he did or did not, and I think that he had not at that time disposed of all his interest in the mine.

Ques. 200.—Had he not before 1850 ?

Ans. 200.—I think that he had either before or in the early part of 1850, but I do not know that he had legally conveyed it all away, nor whether he did not still have some interest in it or its produce.

Ques. 201.—At or before what time do you believe he had legally conveyed away his interest ?

Ans. 201.—Some time during the last year—1856.

(Numbers skipped to 206.)

Ques. 206.—To whom ?

Ans. 206.—A deed was made by him I think during last year to Frederick Billings, of San Francisco, conveying all his interest in New Almaden, as I understood, for the purpose of having Mr. Billings' deed in the proper proportions to the parties who were then the equitable owners of such proportions, or interest.

Ques. 207.—In your answer, No. 200 of cross-exsmination, you say, "I think that he (Castillero) had either before or in the early part of 1850," sold all his interest, &c. Do you mean that the Deed to Mr. Billings was to carry out that sale ?

Ans. 207.—I so understood it.

Ques. 208.—Was the deed to Mr. Billings of all of his original interest, or of a portion only, and what portion ?

Ans. 208.—My impression now is, that it was for all his original interest, or for what of that interest he then at the time of deeding

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had, but I do not remember the wording of the deed. I do not remember to have seen it since about the time it was received, or shortly afterwards.

Ques. 209.—Why was not this claim presented in the name of the real parties in interest, instead of that of Andres Castillero, who so early as the beginning of 1850 had sold out all his interest?

Ans. 209.—My recollection now is, that Mr. Peachy advised its presentation in the name of Castillero, for the reason that he had no proper deraignment of title to all the parties then supposed or believed to be the parties in interest; and because he did not know what, if any, Castillero retained.

Ques. 210.—Would it not have answered as well to present the claim in the name of parties without deraignment of title, as in the name of a party who had sold out all his interest.

Ans. 210.—My recollection is, that the Board of Commissioners required a complete deraignment of legal title from an original grantee to the claimant in whose name the claim was presented, but that parties in interest under an original title or grant could present it in the name of such grantee; such was my understanding of the practice in the Board of Commissioners.

Ques. 211 —Is not Andres Castillero a Mexican citizen? And which of the persons whom you have named as owners of the mine are Mexican citizens? and please state the nationality of each of the persons for whose benefit this claim is now prosecuted?

Ans. 211.—I do not know who were or who were not, of the persons named, Mexican citizens. My impression is, that Mr. Parrott (John,) and Mr. James R. Bolton, are Americans by birth; that Mr. Wm. E. Barron was born in Spain; Mr. James A. Forbes was an Englishman by birth, and a Mexican by naturalization; that Mr. Walkinshaw was British by birth, and I think that I have heard that he was a naturalized Mexican. Mr. Martinez speaks the Spanish language, but I do not know whether or not he was born in Mexico. Mr. Escandon, I believe, is a Mexican by birth, and also Mr. E. W. Barron. Mr. E. Barron, I think, is British by birth, and I suppose Mexican by naturalization, as I have seen his name as one of the Committee on Colonization of the Mexican Government or Congress, but I have no knowledge whether he was so or not. Mr. Wm. Forbes, I think, is British by birth, but whether a naturalized Mexican or not, I do not know. I have never seen him but once, and then but a moment in the road; I judge him to be British by birth.

Ques. 212.—Please look at the affidavit which you made in open Court on the 8th April, 1851, in the 3d Judicial District Court, for the purpose of obtaining a removal of a cause then pending between Berreyesa, et als, and De La Torre, et als, to the U. S. District Court, as the same appears in a certified transcript of the said cause from

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the said Court, now on file in this case, and say whether your last answer corresponds with this affidavit.

Ans. 212.—It is stated in that affidavit that Mr. James A. Forbes was a subject of Great Britain. He so claimed to be at that time, and I believe has been decided so to be by the Circuit Court of the United States for the District of California, in and for the Northern District, notwithstanding that he was a naturalized citizen of Mexico, and resided in California at the date of the Treaty. What information I had at that time as to the then citizenship of Mr. E. Barron, I do not now remember. My reason for thinking now that he must have been a naturalized citizen of Mexico, is the fact of his holding office under that Government.

Ques. 213.—Upon the affidavit to which I have referred you, stating the nationality of James A. Forbes, amongst others, was not the suit of Berreyesa et als, removed from the State Courts to the United States Court?

Ans. 213.—My recollection now is, that the case was removed on stipulation, and after the affidavit.

Ques. 214.—When James A. Forbes was held by the Circuit Court of the United States for the District of California, in and for the Northern District, was it not on a plea in abatement to a suit brought by the same Berreyesa's or some of them, in which James A. Forbes alleged that he was a citizen of the United States?

Ans. 214.—I think it was. And I think that Mr. Forbes at that time had changed the opinion which he held in 1851, as to the effect of the Mexican Treaty. I remember very distinctly that in 1851, he claimed to be a British subject, and said that he did not intend for the present, or until his land titles were settled, to become an American citizen; and that I never knew or heard that he had been naturalized as a Mexican until about the time of the proceeding in the United States Circuit Court referred to.

Ques. 215.—Have you visited the Republic of Mexico at any time since filing the petition in this cause?

Ans. 215.—I passed through the Republic of Mexico from San Blas to Vera Cruz on my journey from San Francisco to New York nearly three years ago, and at no other time.

Ques. 216.—On what day did you leave San Francisco? Did you go by a sailing vessel, or by steamer? When did you arrive at San Blas?

Ans. 216.—In January, 1855, I left San Francisco, near the first of the month. I went down to San Blas in a sailing vessel; it took me about twenty days to make the passage. I arrived at San Blas after a passage of about twenty days.

Ques. 217.—In San Blas did you see any of the owners, or lessees of this mine; if so, which?

Ans. 217.—I did not.

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Ques. 218.—Did you see none of the house of Barron, Forbes & Co. at Tepic?

Ans. 218.—I did not.

Ques. 219.—Did you see any of the owners or lessees of the mine any where in the Republic of Mexico?

Ans. 219.—I did.

Ques. 220.—Were none of the members of the house of Barron, Forbes & Co., in Tepic when you were there?

Ans. 220.—None of them to my knowledge.

Ques. 221.—Which of the owners or lessees of the mine did you see in the Republic of Mexico, and at what place did you see them?

Ans. 221.—I met Mr. Wm. Forbes and Mr. E. W. Barron in the road about half way between San Blas and Tepic. I saw Mr. Martinez in the City of Guadalaxara, and Mr. E. Barron in the City of Mexico.

Ques. 222.—Did you see Mr. De La Torre?

Ans. 222.—I did, in the City of Mexico, and went with him to visit the mines of Pachuco and Real Del Monte.

Ques. 223.—And none of these persons gave you the duplicate original of the denouncement and judicial possession, for which you suppose you must have written at the time when you made affidavit, (December 23d, 1850,) and you asked none of them for it; and which paper you have said you regarded as the true title paper of the parties interested?

Ans. 223.—I have no recollection of any conversation with the parties interested, whom I then saw, with respect to the title papers of the mine, except with Mr. E. Barron. I think the substance of the conversation with him was to the effect, that he had dispatched to California papers connected with the title to the mine, which must have reached here after I had left. I have no recollection of any conversation with respect to the particular character or contents of the papers.

Ques. 224.—When in Mexico did you see José Maria Lafragua, the distinguished Mexican politician and former Minister of Relations, who by the transcript from the Board of Land Commissioners would appear to have come to California and testified in this cause for the claimant?

Ans. 224.—I did not.

Ques. 225.—Did you learn from any of the parties interested in this mine, where he was at that time?

Ans. 225.—I learned, I think, from Mr. E. Barron, that Mr. Lafragua was then in California, or had gone to California.

Ques. 226.—Where did you learn that he went from?

Ans. 226.—My recollection is, that he went originally from the City of Mexico, and immediately from the city of New Orleans, to California.

Ques. 227.—What was the occasion of his leaving the City of Mexico, with whom did he leave, or what other distinguished Mexican

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chaarcters left about the same time, for the same cause, and when did he leave?

Ans. 227.—I do not know when, or with whom he left the City of Mexico. I understood that he came to California to give his testimony in this case. I do not remember to have heard anything said about the circumstances of his leaving the City of Mexico, or with whom or how he left, or at what time.

Ques. 228.—Did you not learn from Mr. E. Barron in Mexico, that Mr. Lafragua left that city and the Republic for political reasons, and that Mr. Olaguibel and other distinguished persons of the same party, had left for the same cause, and about what time they left?

Ans. 228.—I have no recollection of hearing anything of the kind in Mexico. And it is my impression that Mr. Lafragua did not leave for political reasons. The only thing I now remember to have heard touching that subject was, that Mr. Lafragua had made remarks in New Orleans about Santa Anna, and that the latter had given orders, or threatened to give orders to arrest him on his return from California. And I learned either there or subsequently, that on investigation, Santa Anna had found that the remarks were of no importance. I think he did not arrest him on his return from California.

Ques. 229.—On what day did you reach the City of Mexico, and on what day did you leave?

Ans. 229.—I do not now remember the dates. I think I reached there between the 5th and 10th of Febuary, 1855, and left about the 18th of the same month; during that interval I was absent from the City of Mexico a portion of the time visiting other places.

Ques. 230.—When did you reach San Francisco on your return?

Ans. 230.—The latter part of May, 1855.

Ques. 231.—Lafragua was not here then? When did he arrive in California, as you may have since learned, and when did he leave?

Ans. 231.—As I have since learned, I think he arrived here soon after I left, but I do not know the dates. I think he remained here but a few weeks.

Ques. 232.—Did he go by a steamer to Acapulco, or by a sailing vessel to Mazatlan; which vessel was despatched by Bolton & Barron of this city?

Ans. 232.—I do not know how he left; nor do I now remember to have heard on what kind of a vessel he left. If I have so heard, I have forgotten it, and my impression now is, that he went on a steamer to Acapulco, but I have no recollection of how I got that impression.

Examination adjourned until to-morrow, Nov. 4th, 1857, at 11 o'clock, A. M.

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San Francisco, Nov. 4th, 1857.

Cross-examination adjourned until to-morrow, Nov. 5th, 1857, at 11 o'clock, A. M.

San Francisco, Nov. 5th, 1857.

Cross-Examination of H. W. Halleck, a witness produced on behalf of the claimant, continued.

Present: The U. S. Attorney, by A. P. Crittenden; A. C. Peachy for claimant.

Ques. 233.—In your answer, No. 209, on your cross-examination, you say, that you understand the reason why the claim in this case was presented in the name of Castillero, to be the difficulty of deraigning title to the parties in interest. Were not there any title deeds among all the documents relating to the title to the mine, brought to to this country by De La Torre, or since sent by the house of Barron, Forbes & Co. of Tepic, and which you may have at any time seen in the tin box, of which you have spoken, or elsewhere?

Ans. 233.—My recollection is, that the greater part, or all of the papers which I saw in the hands of De La Torre, were copies. But I cannot now distinguish between those which I then saw and those which I have subsequently seen. Some of them purported to be conveyances, but if I remember aright, it was Mr. Peachy's opinion at the time, that they were not properly executed for the conveyance of real estate in California, and that no deraignment of legal title from Castillero to those claiming shares, or interest, in the mine, and lands, of New Almaden, could then be established.

Ques. 234.—What was the nature of the defect which rendered them insufficient to convey real estate, and to deraign title to land?

Ans. 234.—My recollection now is, that the papers were not signed and acknowledged as required by the laws of California, and that they did not state with sufficient definiteness the interest intended to be conveyed. There may have been other defects which I do not at this moment remember.

Ques. 235.—Wherein were they indefinite in describing the interest conveyed?

Ans. 235.—I do not now particularly remember. But I think that in some of them it was not stated whether the interest intended to be conveyed was in the mine and lands, or only in the mine, and that the interest was not sufficiently described.

Ques. 236.—Have not some of the conveyances to which you refer,

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been made of record in the office of the County Recorder of Santa Clara county?

Ans. 236.—I think they have; but whether subsequent or prior to the filing of the petition in this case I do not remember.

Ques. 237.—Can you name some of those deeds which have been put on record in Santa Clara county?

Ans. 237.—I remember none except from Jecker, Torre & Co., or from Mr. De La Torre to Mr. Barron, or to Barron, Forbes & Co., and those not of my own knowledge, so far as I can remember.

Ques. 238.—Did not some of the persons who claimed an interest in this property at the time the claim was presented before the Land Commission, derive that from Jose Castro, Padre Real, Secundino Robles and Teodoro Robles, and not from Castillero?

Ans. 238.—I think they did derive title from the parties mentioned, but my impression is that such titles, or at least a part of them, were ratified and confirmed by Castillero.

Ques. 239.—Under the *Escritura de Compañia* given in evidence on the part of the claimant, had not Jose Castro, Padre Real, Secundino Robles and Teodoro Robles, an interest in the property jointly with the interest claimed by Castillero, and were they not competent themselves to convey the several interests which they claimed, and had they not conveyed those interests to other persons prior to the presentation of this claim before the Board of Land Commissioners?

Ans. 239.—My impression is, that with the exception of Padre Real the parties named had an interest jointly with Castillero, but that the legal title was in the latter. That the parties named had conveyed away their interests, whatever they were, prior to the presentation of the petition. My impression now is, that Padre Real found that he could not hold an interest under the Mexican laws, and that he either surrendered his interest to Castillero, or that the parties to whom he conveyed obtained new conveyances or confirmations from Castillero; my recollection on this subject is not distinct.

Ques. 240.—Do you mean to say that under that writing of partnership, and according to the law in force at its date, the legal title to the whole property claimed by Castillero was in himself?

Ans. 240.—I did not mean to give an opinion of the Mexican law, or of the legal effect of that writing; I meant merely to give what I had heard said about the time of presenting this petition, or subsequently, with respect to the difficulty of deraigning legal title from Castillero to those then claiming interest.

Ques. 241.—Do you know what "Andres Castillero, Capitan de Caballeriá permanente," was doing in California in 1845, and when he arrived here, when he left here, and for what place he left?

Ans. 241.—I do not.

(*Cross Examination concluded.*)

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EXAMINATION IN CHIEF RESUMED.

Ques. 1.—State by what means you remember your visit to Belden's office, spoken of in your examinatien in chief, and state fully all the particulars you remember about that visit and your going to the County Recorder's office with the document referred to.

Ans. 1.—I remember the circumstances of going to his office to look for papers connected with New Almaden very distinctly, from the fact that it was the only time that I ever was in his office; I remember it also from the circumstance that Mr. Belden, in looking over the documents, found some papers connected with some other mine which he said had been much enquired for, and which he was glad to find. I remember pretty distinctly that it was at the time I was staying at New Almaden making translations of papers, and passing New Year's day at that place, the only one I passed there. I also remember that Mr. Greenhow was examining my translations in the office of Halleck, Peachy & Billings, at the corner of Commercial and Montgomery streets; that they occupied those offices from about October or November, 1850, to April, 1851, or a very short time previous to the May fire of 1851. They moved at that time to Merchant street, where they were burnt out.

Ques. 2.—Why do you suppose the document produced by Mr. Houghton to be the same that you saw in Mr. Belden's office, and with him carried to the County Recorder's office?

Ans. 2.—I think I have already stated, from the subject matter of the contents being the same, that the one I there saw purported to be originals of the denouncement and juridical possession, and that the one presented by Mr. Houghton purported also to be made up of original papers.

Ques. 3.—You have stated in your cross examination that in the year 1855, you visited the Republic of Mexico; state the object of your visit, and by whom your expenses were paid.

Ans. 3.—My expenses were paid by myself; the object of my visit was to see the country, and more particularly the battle fields in the vicinity of Mexico; and to examine the manner of working mines in Mexico.

Ques. 4.—In Mexico, did you hear anything said of the character of José Maria Lafragua, the person of that name concerning whom you testified? if yea, state what you learned of his public and private character, and from whom.

(Question objected to, on the grounds, first, that it is not an inquiry as to the general reputation of the witness in the community where he lives and is known; second, that it does not appear that the witness knows the general reputation of Lafragua; third, that the United

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States not having attacked the general reputation of Lafragua, evidence in support of it on the part of the claimants is inadmissible; fourth, that no question was asked the witness upon the cross examination in to the regard general reputation of Lafragua.)

Ans. 4.—After learning, as I have stated in my cross examination, that Mr. Lafragua had gone to California as a witness in this case, I did make some enquiries with respect to his character, and I was told by all persons of whom I enquired that no person in Mexico was more highly respected, and that his character was above all reproach. I remember hearing him compared as a statesman, lawyer and a gentleman, with Mr. J. J. Crittenden and Mr. J. M. Berrien, of the United States. I cannot now remember the names of all the persons with whom I conversed on that subject, but among others I think I remember General Gadsden, the American Minister in Mexico, Mr. Black, the American Consul, Mr. De La Torre and Mr. Jecker, Gov. De La Vega, of Sinaloa, the British Minister in Mexico, Mr. Manuel Escandon, and Mr. E. Barron.

Ques. 5.—State, if you remember, when you first knew that Mr. James Alexander Forbes had been a naturalized Mexican, and if you know when Messrs. Peachy & Billings were first made aware of that fact.

Ans. 5.—I never knew it or heard of it until the time when the plea in abatement was put in in the United States Circuit Court in the case of Tobin vs. Walkinshaw, et als, something more than a year ago. I think Messrs. Peachy & Billings first learned it at that time, as they expressed great surprise that Mr. Forbes told them that he had been naturalized as a Mexican.

Ques. 6.—State, if you please, what was the opinion of Messrs. Peachy & Billings, or either of them, of Mr. Forbes civil status, formed from their knowledge of his former Mexican citizenship, and upon the fact of his not having declared within a year after the date of the treaty of Guadalupe Hidalgo, his intention to remain a Mexican citizen, and upon not having removed his domicil from the State of California.

Ans. 6.—I remember hearing Mr. Peachy tell Mr. Forbes that having been a naturalized Mexican, the treaty and the law made him an American citizen, and that he could not of his own free will, while remaining here, resume his allegiance as a British subject, and that he (Mr. Peachy) must so plead for him in the case.

Ques. 7.—How were the archives kept before you went to Lower California, as you testified on your cross examination, and how, after you came back, and what endorsements were made upon documents filed in the office while you had charge of the archives, and when were the archives moved to Benicia?

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Ans. 7.—Before I went to Lower California in 1847, the archives were kept in Gov. Mason's office, most of them in boxes in one corner of the room, and a portion which had been assorted by Mr. Hartnell were in an open closet in the same room. Gov. Mason himself kept the key of the office. When I returned to Monterey in 1848, those assorted, and I believe all those suppose to relate to land titles, were in a desk made for that purpose, and locked, the key of which I kept from that time, unless absent for a few days from Monterey when it was given to the Governor. I do not remember that any individual deposited any paper in the archives before I left for Lower California, but all deposited subsequently to my return, I am quite certain, were endorsed in the manner I have stated in my cross-examination. These archives were turned over by me to Major Canby in Monterey in February, 1850, and a few months afterwards were by him removed to Benicia.

CROSS EXAMINATION RESUMED.

Ques. 1.—Are the "Mr. De La Torre, Mr. Jecker, Mr. Manuel Escandon and Mr. E. Barron," mentioned in your answer to question 4 of direct examination resumed, the same persons of those names whom you have mentioned on the cross examination as having been interested in the Almaden mine, and were they interested at that time?

Ans. 1.—Mr. De La Torre, and Mr. Jecker were the persons whom I have mentioned as having been, as I understood, interested in the mine; only Mr. E. Barron, I believe, was interested at that time. Mr. Escandon, whom I have mentioned as being interested in the mine, I did not see in Mexico, and is not the person whom I have mentioned in the answer alluded to.

Ques. 2.—Is the Mr. Frederick Billings, to whom the deed of Castillero, which you have spoken of, was made, in 1856, the same Mr. Frederick Billings who is a member of your firm of Halleck, Peachy & Billings?

Ans. 2.—He is.

(It was stipulated by the Counsel for the respective parties to this cause, on the examination, that this deposition is taken subject to all objections, except as to the forms of questions and answers.)

The witness, before signing the deposition, wishes to correct a statement made by him in his cross examination with respect to the date of his return from Lower California in 1848; on reflection he thinks he returned in the latter part of May or the fore part of June, 1848, but can remember no circumstance by which to fix the date.

H. W. HALLECK.

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Subscribed and sworn to before me this 5th Nov., 1857.

CUTLER McALLISTER,
U. S. Com.

Filed Nov. 20th, '57. JOHN A. MONROE,
Clerk.

DEPOSITION OF BENJAMIN DAVIDSON.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SAN FRANCISCO, November 28, 1857.

On this day before the District Court of the United States for the Northern District of California, came Benjamin Davidson, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in case No. 366, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT: The District Attorney and the counsel for claimant.

QUESTIONS BY THE DISTRICT ATTORNEY.

Question 1.—Have you produced the box, as required by the subpœna *duces tecum?*

Answer 1.—I have.

Question 2.—From whom did you receive this box?

Answer 2.—From Mr. Laurencel and James Alexander Forbes. It was deposited, subject to their joint order, with me for safe-keeping. It has so remained ever since.

(Papers produced and handed to the clerk to be marked.)

CROSS-EXAMINED.

This box was deposited with me about six or eight months ago by Mr. Laurencel; Mr. Forbes came with him, I believe; I am not positive. It was distinctly understood that I was not to give it up except on their joint order. This was the distinct understanding. The box has been taken away once or twice on the written order of the parties

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I cannot say when it was last taken away; one order was in writing; cannot say whether I can produce it.

DEPOSITION OF HENRY LAURENCEL.

Henry Laurencel, sworn on his *voire dire*.

Question 1.—Have you any interest in defeating the claim of Andres Castillero to the land in controversy in this cause?

Answer 1.—Yes, sir.

Q. 2.—What is the nature of your interest?

A. 2.—I have an interest in the claim of Charles Fossat, and the whole claim is under my control.

Q. 3.—What claim is that?

A. 3.—For a part of the Rancho de los Capitancillos.

Q. 4.—Under what grantee?

A. 4.—Under Justo Larios.

Q. 5.—How long have you had this interest?

A. 5.—Since August, 1854.

Q. 6.—Did you have no interest before that time?

A. 6.—I had no interest, but was managing the claim of Fossat.

Q. 7.—When did he acquire his interest?

A. 7.—I believe his first mortgage was in March, 1851. His next interest was in January, 1852. I bought for him at sheriff's sale three undivided fourths of the Rancho.

Q. 7.—Where does he live?

A. .7—In the neighborhood of Oroville.

Q. 8.—To whom was the Rancho granted?

A. 8.—To Justo Larios.

Q. 9.—What portion of Fossat's interest do you hold?

A. 9.—I hold one-half of the interest purchased at sheriff's sale in 1852.

Q. 10.—Who holds the remaining half?

A. 10.—James Eldridge.

Q. 11.—From whom did he acquire his interest?

A. 11.—From Charles Fossat, in March, 1854.

Q. 12.—What did you give him?

A. 12.—A large amount of money; the amount is my private business.

Q. 13.—Do you know the mine of New Almaden?

A. 13.—I do.

Q. 14.—Do you claim that that mine is on your land?

A. 14.—According to my best knowledge and belief it is so.

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Q. 15.—You have then a pecuniary interest in defeating this claim?

A. 15.—I have.

(Testimony objected to on ground of interest; taken subject to exception.)

WITNESS SWORN IN CHIEF.

Q. 17.—Look at those papers, (papers produced from box); by whom are they owned?

A. 17.—By James Alex. Forbes and myself.

Q. 18.—How did you acquire an interest in them?

A. 18.—By paying for them.

Q. 18.—What amount did you pay?

A. 18.—I paid a large amount; I decline to say the amount.

Q. 19.—When did you purchase them and for what purpose?

A. 19.—I purchased them between November 1856, and March 1857, when I finally bought and paid for them. My knowledge of their contents induced me to purchase them.

Q. 20.—Please examine the papers, and state in whose hand-writing they severally are.

A 20.—I know the hand-writing of that marked "F. No. 27." It is the hand-writing of James Alexander Forbes. I know it well. I have seen him write. The endorsement is written by myself. "F. No. 26," is also in his hand-writing; the endorsement is also in his handwriting. "F. No. 25." is also in his hand-writing; also the endorsement.

(It is admitted that the box containing the papers was deposited with B. Davidson, March 4, 1857.

"F. No. 24." is in the hand-writing of James Alexander Forbes; the whole of it. So are also "F. No. 23," "F. No. 22" and "F. No. 21." "F. No. 16," "F. No. 20," and "F. No. 12;" these I believe to be in the hand-writing of Mr. William E. Barron—but I am not very positive about it; my only means of information is from the comparison of these papers with a private letter of my own from Mr. Barron.

Q. 20.—Have you conversed with Mr. James Alexander Forbes as to the circumstances under which those letters were written?

(Question objected to. Question withdrawn.)

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CROSS EXAMINATION.

Q. 21.—What did you pay Mr. Forbes for those papers?
A. 22.—I have already declined to answer that question.

(The Court requires the witness to answer.)

I paid Mr. Forbes, twenty thousand dollars for the interest that I was acquiring in depositing these papers, and the engagement on his part to go to Mexico, when I should request him to do so, and procure for me the proof of the fraud committed in this case, which he assured me he could procure. I was also to pay, if necessary, his traveling expenses.

Q. 22,—Did you pay in cash?
A. 22.—I paid one half in cash, and gave security for the other half. It is now due. The contract was verbal. I gave him a pledge before witnesses that I would pay him the money. The witnesses were Mr. Randolph, Mr. Crittenden, and Mr. Gould. I promised him not to sell or hypothecate my interest in my Rancho without paying him.
Q. 23.—Why did you not put it in writing?
A. 23.—I did not wish to; Mr. Forbes, I believe, was satisfied; Mr. Eldridge was not a party to the contract at the time it was made; he subsequently assented to it; I paid Mr. Forbes one-half of the $20,000 some time in March, 1857; Mr. Eldridge was then in Philadelphia; he assented to my contract on his return in May, 1857; he paid one-half; the whole amount was charged to the debit of our Rancho.
Q. 24.—What then did you mean by saying he adopted the contract, and paid you one-half?
A. 24.—I never had mentioned this contract to him; I made it on my sole responsibility; I paid to Mr. Forbes this money for the joint use of those papers.
Q. 25.—What did you mean by "joint use"?
A. 25.—I understood that they were to be used by the joint consent of both; I did not understand that I purchased the sole use of those papers; the papers are used on this occasion without his consent.
Q. 26.—Did you ask Mr. Forbes' consent to use them on this occasion?
A. 26.—I did; he said he would consult counsel; after consulting he refused
Q. 27.—How long did it take you to drive this bargain?
A. 27.—The first contract was made with him about Chistmas

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time; it was nearly in the same terms as the last, except that the papers were to remain in Mr. Forbes' possession.

Q. 28.—How much did he ask for these papers?

A. 28.—I did not bargain any; I gave him the price he asked.

Q. 29.—Do you think Mr. Forbes will accept the last half of this money?

(Objected to—withdrawn.)

Q. 30.—Where is Mr. James Eldridge?

A. 30.—I don't know; he is at home, or in New York, Philadelphia, or Washington.

Q. 31.—Did you read those papers before you bought their use?

A. 31.—I did. I have not requested Mr. Forbes to go to Mexico.

Q. 32.—Do you know what were Mr. Forbes' pecuniary circumstances?

A. 33.—I did not then know what they were at that time; I first learned that Mr. Forbes was a bankrupt from Mr. Peachy's cross-examination of him in the case of the United States vs. Charles Fossat; at the time he gave that deposition I had already made an agreement with him touching these papers; I received an interest in the Almaden mine in payment of a claim I had against him; this was in August, 1850; I have sold this interest. I have stated that I promised Mr. Forbes not to sell or mortgage my interest in the Rancho de los Capitancillos without paying him; that pledge, or promise, was made last night. I have been active in procuring testimony and employing counsel to defeat this claim; I consider that by defeating it I will add greatly to the value of my Rancho; I consider that by defeating it I will remove a cloud upon my title.

DIRECT RESUMED.

I sold the interest I acquired in the Almaden mine, early in 1851.

Q. 33.—When you sold it, had you any knowledge of these papers?

A. 33.—I had never seen any papers relating to the New Almaden mine. The oral agreement for the payment of the last $10,000, was the same as that I have stated to have been made in the presence of Messrs. Crittenden, Randolph and Gould.

CROSS-EXAMINATION RESUMED.

I endeavored to procure a compromise by means of these papers, with the Almaden Mining Company; it was through Mr. Hall McAllister. They were also exhibited to Mr. John Parrott for the same purpose.

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DIRECT.

I spoke to Mr. Hall McAllister, both before and after his employment in this case, as a proper person to approach as representing the interest of his client; openly and without concealment. I desire to say that in the first agreement with Mr. Forbes, he imposed upon me the obligations to make an offer for a compromise; I then sought an interview with Mr. Hall McAllister, sometime in January, 1857. When Mr. Parrott saw the papers it was not at my instance; the answer I received from Mr. Hall McAllister on behalf of Mr. Parrott being, that if Mr. Forbes or myself had such documents they were fraudulent; I then ceased all negociation on this subject. Mr. Parrott inspected these documents at his request, as I understood, to Mr. Crittenden.

Q. 34.—Did you take the advice of counsel as to the expediency of making a compromise?

A. 34.—I did not; it was a peremptory condition of the first contract that I should make the offer of compromise through Mr. Hall McAllister.

CROSS-EXAMINATION.

The first contract was in writing; it was cancelled at the time I made the second contract. The second contract was in writing; I have destroyed my counterpart; it was in duplicate; I destroyed it by the advice of counsel; I did not preserve a copy of either; I thought it would be inconsistent with the object with which I destroyed the papers.

H. LAURENCEL.

Sworn to before me,
OGDEN HOFFMAN.

DEPOSITION OF G. W. P. BISSELL.

Question.—Are you acquainted with Alexander Forbes, of Tepic?

Answer.—I am: or was, a few years ago. I know the handwriting of Alexander Forbes, William Forbes and Eustace Barron.

Q.—Look at "F. No. 1," and say in whose handwriting it is.

A.—It is the signature and handwriting of Alexander Forbes.

Letter marked "F. No. 2," is in the handwriting and is the signature of Alexander Forbes.

Letter marked "F. No. 3," is also in the handwriting and signature of Alexander Forbes.

"F. N. 4," is handwriting and signature of the same.

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"F. No. 5," is handwriting and signature of the same.
"F. No. 6," is handwriting and signature of the same.
"F. No. 7," is handwriting and signature of the same.
"F. No. 8," is the handwriting and signature of the same.
"F. No. 9," is handwriting and signature of the same.
"F. No. 10," is handwriting and signature of the same.
"F. No. 11," is the handwriting and signature of the same.
"F. No. 12," is a press copy signed in the name of Barron, Forbes & Co. The signature is in the handwriting of William Forbes.
"F. No. 13," is the handwriting and signature of Alexander Forbes.
"F. No. 14," is the same.
"F. No. 15," is the same.
"F. No. 16," is signed by Barron, Forbes & Co.; my impression is that it is the signature of Eustace Barron, a partner in the house.
"F. No. 17," is handwriting and signature of Alexander Forbes.
"F. No. 18.," is signature of Barron, Forbes & Co.; handwriting of Eustace Barron.
"F. No 19," is handwriting and signature of Alexander Forbes.
"F. No. 20," is signed by Barron, Forbes & Co.; the signature is that of Eustace Barron.
"F. No. 21," is a Spanish document; do not know the handwriting: it appears to be a copy.

The Alexander Forbes I have spoken of was a partner in the house of Barron, Forbes & Co. in 1846—1847. He retired from the firm I think in 1848.

Mr. Eustace Barron was at the head of the house. Mr. Alexander Forbes resided in Tepic, in 1847 and 1848, up to the time he left the country, which I think was at the close of 1848. He has since resided in London. I am not certain as to the time he left. Subsequent to the time he left, a son of Mr. Eustace Barron was taken into the house. During my residence at Tepic, Mr. Alexander Forbes made two voyages to California. The last was in 1847. He was absent about six months. He must have been in Mexico nearly two years after his return from California. I saw James Alexander Forbes in San Blas, in 1847. He passed through on his way to Tepic. It might have been in 1849; if so, it was before June, 1849, for I left at that time. San Blas is the seaport of Tepic; it is on the direct road to Tepic. I saw Mr. James Alexander Forbes both going to and coming from Tepic.

CROSS-EXAMINED.

In 1846 I was at Mazatlan. I was there in 1845. My impression is he stopped there on his way to California. I would not like to swear that he was here in 1845-6. I feel almost morally certain that he was. I am certain he was here in 1847.

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[F. No. 1.—J. A. Monroe. [O. H. No. 16.]

Tepic, 11th May, 1846.

My Dear Sir:

I wrote to you at great length on the 15th ult. by the Rev. Mr. Macnamara, who intends visiting California, and who proceeded to Mazatlan in order to procure a passage; but he is still there, and there is every probability that he will go by the vessel which takes this. I need not repeat what I have already said, but it may not be amiss, in case of my letter not reaching you, to state that its object was to request of you to procure as correct information as you could respecting the quicksilver mine, or mines, lately said to be discovered in California, one of which you mention as being worked by Mr. Castillero. If quicksilver mines of value are discovered, it would be of immense interest for Mexico, as owing to the scarcity and high price of this article, the poorer silver mines of Mexico cannot be worked. I therefore beg to request your kind attention to this letter.

I am, my dear sir,
Your most obedient servant,
ALEX. FORBES.

(Addressed)
James A. Forbes, Esq.,
British Vice Consul,
California.

(Endorsed)
Alex. Forbes, May 11th, '46,
rel. to quicksilver mine. No. 1.

F. No. 2.—J. A. Monroe. [O. H. No. 17.]

2d September, 1846.

My Dear Sir:

I am much obliged to you for your offer to procure for me more information respecting the quicksilver mines, and I hope they may turn out to be of value. Anything certain which you may give me about them will be very interesting, as our mining establishments in this country must greatly be benefitted by the abundance of quicksilver, and which is now scarce and dear here. I understand Castañedo is still in Mexico. Does not one of these mines belong to him, or has he disposed of it?

I am, my dear sir,
Yours very truly,
ALEX. FORBES.

J. A. Forbes, Esq.

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I received your power of attorney to James Murray, Esq., and forwarded it by last packet.

(Endorsed)
ALEX. FORBES, Sept. 2d, '46,
rel. to Quicksilver Mine, No. 2.

(In pencil.) A. Forbes, Private, 1st and 2d Sept. 1846.

F. No. 3.—J. A. MONROE. [O. H. No. 18.]

TEPIC, 7th January, 1847.

JAMES A. FORBES, Esq., California,
MY DEAR SIR:

I had the pleasure to receive your very obliging letter of the 29th of October last, which chiefly relates to the mine of quicksilver about which I wrote you at so much length by Mr. Macnamara. I had previous to the receipt of your letter been in treaty with D. Andres Castillero, respecting this mine, and on the arrival of Mr. Macnamara with the powers from the other proprietors, the treaty was much facilitated, and I am now happy to inform you that I have contracted for the "Habilitation" of the mine, and have also purchased a part of Mr. Castillero's "Barras," all of which will be made known to you by Mr. Walkinshaw, who goes to California as my attorney and agent for the examination and working of the mines. Mr. Walkinshaw will wait upon you as soon after his arrival as possible, and will show you all the documents, and ask your advice and assistance in carrying out my views.

It is needless for me to say more, than that I count on you as a friend who will lend your best assistance to bring this negotiation to a good account, and as you inform me that you are the proprietor of two "Barras," it will be for your interest, and that of all others concerned, that every means may be used to make the most of it.

I have sent up a small sum of money to make a beginning, and if Mr. Walkinshaw is of opinion that the business ought to be carried on to a large extent, the necessary apparatus will be ordered, and ample funds sent to carry on the business properly.

I have for the present only sent 114 iron bottles, but I can get a large quantity in this country when they may be required.

Mr. Walkinshaw will inform you that everything is left open respecting the interest which he and others may take in this enterprise, and and I trust you will also leave to me the regulation of the affair which must depend on after prospects. For the present I wish no one to run any risk or to incur any expense but myself, which, however, you

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must be aware will be very considerable; but if the mine turns out well there will be sufficient for all.

I, in conclusion, beg leave to recommend most strongly my friend Mr. Walkinshaw to your best attentions and assistance, and I am sure you will find him most worthy of your confidence.

I am, my dear sir,

Yours most sincerely,

ALEX. FORBES.

(Endorsed)

ALEX. FORBES,
relative to mine of quicksilver,
7th Jan'y, 1847. No. 5.

F. No. 4.—J. A. MONROE. [O. H. No. 19.]

MONTEREY, 1st Oct., 1847.

JAMES A. FORBES, Esq.,

MY DEAR SIR:

You will no doubt be surprised to hear of my being in Monterey, and I am so myself. I, however, resolved to take a trip to this country, which I have so long wished to visit, and arrived last afternoon in the "William," where I have been kindly received by the authorities, and no difficulty of any kind thrown in my way.

I have sent to Mr. Alden to come over here, if he can, and take some people to the mine which I have brought with me, and it is very probable I shall accompany him, when I shall have the pleasure to see you.

Mr. Walkinshaw has come with me, but without his family. He has been very ill all the voyage, and is now on shore in a very weak state, but I hope he will soon recover. I have a thousand things to say to you, but must wait till I have the pleasure of seeing you.

Please inform the good Padre Real of my arrival, and tell him I don't write him, as I am a bad scribe at Castillano, but that I shall soon be at his domicile.

Believe me to be, my dear sir,

Yours very sincerely,

ALEX. FORBES.

We have had 32 days passage.

The American Army, under Gen. Scott, was within six leagues of the City of Mexico. 10,000 men—and a battle was daily expected. The Mexican say they have 32,000.

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(Endorsed) ALEX. FORBES,
on his arrival at Monterey, Oct. 1st, 1847. No. 3.
(In pencil.) Alex. Forbes, Monterey.

F. No. 19—J. A. MONROE. [O. H. No. 21.]

MINA, 19th Nov., 1847.

JAMES A. FORBES, Esq.,
MY DEAR SIR:

I wrote you the other day, which did not find you at home. I am still here preparing the appparatus for making a better trial of the ores, but as Mr. Wallis the artizan is unwell, we go on but slowly. I am also very anxious to have the mine cleared out and put in a proper working state before I leave it, and for this purpose we have been sinking a "Plan" at the "Respaldo Alto" in order to run a "Testero" across the vein, and to discover the value and abundance of the ores in its whole width. In doing this we have most unexpectedly found that in this "plan" there are no cinnabar whatever, although over it, in the upper part of the vein, there are ores. This puzzles us greatly, but we hope that in cutting across we will fall in again with ores towards the "Respaldo Bajo." Can this mine be a "Manto?" I must verify that, and so must you and the Padre with your own eyes. I see very good ores in the upper part of the mine in all directions, but why does it get into Borra lower down? The Plan is about five varas lower down than when you and the Padre wrought, and on the other side of the vein. The people will go on cutting across, and when they again get into "Metal" I will send you a man on purpose. I am confident we shall find them, but there will always be about two varas or more of the vein next the "Respaldo Alto" without ores; at least I think so, and hope nothing worse may be the case. We still see good ores on the upper part of the vein near the "Respaldo Bajo," where you and the Padre took out your ores.

I have been somewhat alarmed about this Borra, but I hope there will ultimately be no cause for this; yet I have thought it right to inform you and the Padre, and have no doubt but that my *express carrier* will in a few days carry better news.

I am, my dear sir,
Yours very truly,
ALEX. FORBES.

(Endorsed)
B.
ALEX. FORBES, Mine of Almaden, Nov. 19, 1847.

(Addressed) Sr. D. DIEGO A. FORBES,
Ausente, Al Sr. PADRE REAL, Santa Clara.

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F. No. 5—J. A. MONROE. [O. H. No. 23.]

MINE, 24th Nov., 1847.

For Mr. J. A. FORBES
and
The PADRE REAL,
} Santa Clara:

We have at last found the vein or "cinta" of ores which we were looking for, so that I have now the pleasure to inform you and the good Padre of our luck as I promised I should do; but I fear the mine will be reduced to this "cinta," and the great body of it will be "Tessetate Muerto."

But perhaps this cinta may be wider below than it is above. To see whether this is so or not has been the object of our labors, *since discovering the proper direction of the vein of the whole mine*, which discovery makes everything more plain.

This direction was before *entirely mistaken*, of which and other things, we will have a great deal to talk about when we meet. When Mr. Walkinshaw arrives and takes a look at the mine, I think we shall take a turn to the mission. I expect him to be at Bernal's Rancho this afternoon.

I may say now, that it is impossible we can go off the main vein of the mine, as it is entirely different from the walls (Respaldos,) they being of hard rock of quite different character, whereas the vein is quite soft and easily distinguished.

All we have to do is to look for the "cintas" which have got ores, which, in my opinion, will be reduced to one, *not very wide*.

A. FORBES.

(Endorsed) ALEX. FORBES,
Mine of Almaden, Nov. 24, 1847. No. 4.

F. No. 6—J. A. MONROE. [O. H. No. 20.]

N. ALMADEN, 19th Jan., 1848.

MY DEAR SIR:

I am very much obliged to you for your very prompt attention to the business in hand, and return the expediente immediately.

I am much surprised at the result of your assay, and shall try what I have.

It will of course be better to say nothing about it, particularly as I have already written to Monterey that there is no mine, nor does there appear to be any quantity of this kind of stuff. I hope soon to see the Alcalde.

My dear sir, yours truly,
A. FORBES.

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(Directed) JAS. A. FORBES, Esq., &c. &c. &c.,
Santa Clara.

(Endorsed)
Alex. Forbes, New Almaden, 19th Jan., 1848. No. 6, No. 6.
(In pencil)
Suñol $4\frac{1}{2}$, Sainse $4\frac{1}{2}$, Pena $4\frac{1}{2}$, Narbaez $4\frac{1}{2}$, Padre 4, Forbes 2.

F. No. 25—J. A. MONROE. [O. H. No. 24.]

SEÑOR JUEZ DE PAZ.

Alejandro Forbes a nombre de simismo, y de sus consocios dueños de la mina de plata, oro, y azogue, conocida con el nombre de Santa Clara; y ahora llamada Nueva Almaden; y a nombre de la compañia formada para su laborio y avio de la misma, ante V. como mas haya lugar en derecho, espongo: que la Ordenanza de mineria en su titulo IX. art. 10, previene que toda mina debe visitarse y examinarse por peritos nombrados por el Juez, a fin de cerciorarse si son trabajadas conforme a dhā ordenanza. Y deseando el que forma cumplir con las leyes; A. V. como Juez competente (por falta del tribunal á quien le toca entender en la materia) le suplico se sirva de pasar con los testigos de su asistencia, a la espresada mina, a inspeccionar las obras y labores de ella, ahora en corriente, conforme la ordenanza de la materia; como tambien a reconocer el rumbo y echado de la veta de la enunciado mina a su actual profundidad; con el objeto de reformar y enmendar (pues hay lugar para ello,) los terminos de la primera acta de posesion y para corregir tambien cualquiera otra equivocacion que en ella parezca; segun el titulo VIII. art. 11 de la misma ordenanza: particularmente a decidir el aumento de pertenencias que deben de poseer los dueños de la citada mina, y su habilitador por si mismo, y como reprsentante de aquellos; y la cuadra que corresponde a las dichas pertenencias conforme al verdadero echado de la veta. Por lo que—

A. V. suplico se serva demandar proveer el presente escrito en los terminos espuestos; y practicadas que sean las diligencias que se me devuelvan para el debido resguardo y fines que convengan a los interesados, sirviendo de admitir este en papel simple por falta total del sellado en este departmento.

Pueblo de San José, 19 de Enero de 1848.

(Endorsed) Copy of memorial to Alcalde for examination of mine and extension of pertenencias. 1848.

[TRANSLATION OF THE PRECEDING DOCUMENT.]

TO THE JUSTICE OF THE PEACE.

Alexander Forbes, in the name of himself and his associates, owner of the mine of silver, gold and quicksilver, known by the name of Santa

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Clara, and now called New Almaden, and in the name of the company formed for the working and furnishing of the mine, before you, as may be most proper in law, represent that the mining Ordinance, in Title IX. Art. 10, provides that every mine ought to be visited and examined by skilful persons named by the judge, for the purpose of ascertaining if they are worked in conformity to said ordinance; and the subscriber desiring to comply with the laws, prays you, as the competent judge (for want of the tribunal to whom it belongs, to judge in the matter) that you will be pleased to go with your assisting witnesses to the said mine to inspect its works and labors now being carried on, in conformity to the ordinance upon the subject; as also to determine the direction and inclination of the vein of the said mine to its present depth for the purpose of reforming and correcting (since there is occasion for it) the boundaries of the former act of possession, and to correct also such other mistakes as may appear in it, according to Title VIII. Art. 11, of the same ordinance, particularly to decide upon the increase of pertenencias which ought to be possessed by the owners of the said mine and its contractor for himself, and as the representative of the former, and the square which corresponds to the said pertenencias, in conformity to the true inclination of the vein.

Wherefore, I beseech you that you will be pleased to have this writing carried into execution in the terms expressed, and when the proceedings are taken, that they may be returned to me for the just protection and ends which may suit the persons interested, you being pleased to admit this on common paper, from the total want of sealed paper in this department.

Pueblo de San José, 19th of January, 1848.

F. No. 8—J. A. Monroe. [O. H. No. 22.]

New Almaden, 1st February, [1848.]

James A. Forbes, Esq.,

My Dear Sir:

I received an express last evening giving me all the news from Mexico, and informing me of the Natalia being about to sail for the Mexican coast and by which I have taken the opportunity to forward letters to Mexico.

I have had the imprudence to open your despatch. They told me that it contained newspapers and as I knew Gen'l Millers hand, and it being a public letter, and that perhaps it might contain letters for me which I could not get if sent on, in time to allow me to write (if so required) by the Natalia; for all these reasons I broke open the packet. But although I know you will not be offended at what I have done, yet I would rather not have done so, as I think nothing whatever can jus-

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tify one in opening directed letters to others without their previous sanction.

You will find by the Alcanal of Guad[a] and the Iris, what is going on in Mexico, and what my friends in Monterey write is to the same purpose. The present party, Péna y Péna, Herrera, Otero, Bustamente & Co., are by far the most respectable party in the Republic, and there is a better chance for their doing something better, either for peace or war than ever that most infamous rascal, Santa Anna, and his party would have done. Now that they have got rid of that blackguard, there are better prospects than before, but the present party want energy, and the third party, the Puros, (Democrats,) will most probably upset them, when greater confusion than ever will ensue.

You will find that the American President is getting more courage in prosecuting the war than before, and has recalled Mr. Trist, desiring the Mexicans to send to Washington if they wanted peace. I have, as you know, always thought that on their getting possession of a great part of Mexico, and their volunteers *covering themselves with glory*, the war would become popular, and they would *go ahead* and possess themselves of the whole of the Mexican Republic—particularly when they have got over the fears of European interference.

You may now take my opinion a little farther, and set down Mexico as already, virtually, a part and portion of the *Union*, alias the U. S.

It is said that Gen. Yañes goes to Tepic with 4,000 men, he is a superior kind of man, and a most intimate friend of ours, so that our interests there will be protected in as far as depends upon him.

As Asconas letter gives a very good summary of the news, I send it for your perusal.

This being a rainy day, and being desirous to communicate what I know in the shape of news, I inflict upon you this long epistle.

I am my dear sir, yours very truly,
ALEX. FORBES.

Please explain all this news to my good friend the Padre.

You will see by Gen. Millers list what a crash there has been in England. None of our friends are in this black list. Liverpool and Glasgow seem to suffer most.

I am my dear sir, yours, &c.,
A. F.

(Addressed)
James A. Forbes, Esq., &c. &c. &c.,
Santa Clara.

(Endorsed)
Alex. Forbes, New Almaden, 1st Feb., 1848. No. 7,

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F. No. 18—J. A. Monroe. [O. H. No. 27.]

Tepic, 11th April, 1849.

Jas. Alex. Forbes, Esq., San Francisco.

Dear Sir:

We beg leave to refer you to Mr. Alex. Forbes' letter of the 9th inst., respecting the arrangement of the affairs of the Mine of New Almaden, and beg to recommend that negotiation to your best care and management until we can forward the necessary instructions for your goverment. You may now rely on this Mine being worked to the utmost of its capabilities of production and sale of quicksilver on the arrival of the apparatus, and we hope to make up for the delay which circumstances have hitherto prevented this important concern from being productive. We shall soon have the pleasure of sending you a list of the company of which the "Habilitadores" are composed. The House of Jecker, Torre & Co., of Mexico and Mazatlan, and our own are chiefly interested, and as Don Ysidoro de la Torre has gone to Europe, he will concert with Mr. Barron everything which can tend to the successful development of this enterprise.

We are, dear sir,

Your most obedient servants,

BARRON, FORBES & CO.

(Endorsed) Barron, Forbes & Co. *C*

Relative to Habilitacion of New Almaden.

April 11th, '49.

F. No. 20—J. A. Monroe. [O. H. No. 1.]

Tepic, 20th May, 1849.

James A. Forbes, Esq.,

Sir:

From certain circumstances which you have communicated to us, it may be necessary to purchase some lands in the vicinity of the Mine and Hacienda of New Almaden, in California. We hereby empower you to make such purchases as may be necessary to the secure possession of this Mine and Hacienda, or to effect such other arrangement as you may deem necessary for that purpose—the price of such purchase not to exceed five thousand dollars, without consulting with us upon the subject.

We are, sir,

Your most obedient servants,

BARRON, FORBES & CO.

(Addressed) James A. Forbes, Esq., California.

(Endorsed) Barron, Forbes & Co,,

Authorizing the purchases of land, J.

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F. No. 21—J. A. Monroe. [O. H. No. 2.]

Copia. Muy Reservado.

Nota de los Documentos que Don Andres Castillero deberá conseguir en Mejico.

1°. La plena aprobacion y ratificacion por el Gobierno Supremo de todos los actos del Alcalde del Distrito de San José, en la Alta California, en la posesion dada por dicho funcionario, de la mina de Azogue ubicada en su jurisdiccion, a Don Andres Castillero en Diciembre de 1845.

2°. Un titulo de concesion absoluta y sin condicion, de dos sitios de ganado mayor, a Don Andres Castillero, expresando los linderos siguientes.

Por el norte con terrenos del Rancho de San Vicente y los Capitancillos; por el Este, Sur, y Oeste con terrenos ó serranias baldias.

3, Las fechas de estos documentos deberan de ser arregladas por Don Andres: el testimonio de ellos tomado en debida forma, y amas, cetificados por el Ministro Americano en Mejico, y remitido a California cuanto antes.

Tepic, Mayo 27, de 1849.

(Endorsed)

Copy of memorandum left with Alex. Forbes for Castillero in Tepic, May 27, 1849. I.

[Translation of the Preceding Document.]

(Copy) Very Private.

Memorandum of the Documents which Don Andres Castillero will have to procure in Mexico.

1st. The full approbation and ratification by the Supreme Government of all the acts of the Alcalde of the District of San José, in Upper California—in the possession given by the said officer of the quicksilver mine situated in his jurisdiction, to Don Andres Castillero in December, 1845.

2d. An absolute and unconditional title of two leagues of land to Don Andres Castillero, specifying the following boundaries: On the north by the lands of the Rancho of San Vicente and Los Capitancillos, on the East, South and West by vacant lands or vacant highlands.

3d. The dates of these documents will have to be arranged by Don

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Andres. The testimony of them taken in due form, and besides certified to by the American Minister in Mexico and transmitted to California as soon as possible.

Tepic, May 27, 1849.

(Endorsed)

Copy of memorandum left with Alex. Forbes for Castillero, in Tepic, May 27, 1849. I.

F. No. 23—J. A. Monroe. [O. H. No. 3.]

(Copy) Private.

San Francisco, Oct. 28th, 1849.

William Forbes, Esq., Tepic.

My Dear Sir.

I have been detained at this place until the present moment, occupied in completing the arrangements explained to B. F. & Co., under the date of yesterday, having raised the sum of $27,180 $\frac{67}{100}$ dollars, from Probst S. & Co. and Webster alone.

I must again call your attention to the importance of my suggestions relative to the perfecting the title of the Mine of New Almaden, and without entering now into the particulars already explained to yourself and to Mr. Alex. Forbes verbally, I desire only, to impress upon your mind the vast importance of securing from the Supreme Government of Mexico, the documents comprised in the memorandum left with Mr. Alex. Forbes, when I was in Tepic, for Castillero. By my other letters by this conveyance, you will be informed of all the particulars of the transactions that have occurred recently in the affairs of the Mine, and you will see the risk in which this valuable property is placed by the delay that has occurred in the acquisition of the documents referred to.

I remain, my dear sir,
Yours sincerely,
JAMES ALEX. FORBES.

(Endorsed)
Copy letter to Wm. Forbes, Private, from San Francisco, Oct. 28th, 1849. III.

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F. No. 22.—J. A. Monroe. [O. H. No. 4.]

(Private.) COPY.

Santa Clara, Oct. 30th, 1849.

Aexander Forbes, Esq.,

My Dear Sir:

By my letters to yourself and to B. F. & Co., from the 22d to this day, you will be informed of the great danger in which the mine of New Almaden has been thrown, and the disagreeable and vexatious proceedings caused me by Mr. Walkinshaw and his associates, in their denunciation of the mine for abandonment: You will however have the satisfaction of knowing also, that I am to be reinstated in the possession of that property, both Mine and Hacienda, in two or three days hence, by judicial process.

Although I feel much gratified at my successful defence of the case, yet I am extremely apprehensive of furthur difficulties, in the event that those parties should succeed in purchasing the part of the land of the Berreyesas that they have offered to purchase, (which embraces the mine and hacienda,) for twenty-five thousand dollars—just five times the amount you all authorised me to pay for the same identical tract!

Figure to yourself the position of the affair of the mine if I do not strike boldly at our opponents, by purchasing the land at a higher price than they have offered to pay for it, and by thus frustrating their plans, secure the mine and hacienda from further risk.

You will now readily perceive the great importance of my advice to you to purchase a part both of the lands of Cook and of the Berreyesas. You were of the opinion that this measure would not be necessary, in view of the supposed facility of getting the title to the mine perfected in Mexico.

It is now more than five months since it was decided that Castillero should procure the necessary documents in that city, and that they should be sent to me as soon as possible. On the one hand, I depend upon the precarious and illegal possession of the mine, granted by the Alcalde of this District to Castillero, who was in reality the Judge of the quantity of land given by the Alcalde; and on the other side, I am attacked by the purchasers of the same land, declared by Castillero himself to comprise the mine. In the absence of the all important document of the ratification of the possession so given, I am compelled to purchase the part of the land of the Berreyesas which Walkinshaw and his party have offered to purchase, and you must not be surprised if I shall go far beyond the price that they have offered, because it is the only mode of securing the title to the mine and hacienda; for if Castillero should fail in getting the desired documents from Mexico, it is the sole mode of safety of this property.

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I shall endeavor to procrastinate as far as possible this purchase, and, moreover, to frustrate all the plans of Walkinshaw and his associates for accomplishing *their* purchase, and I do entreat you to use every effort to send me the document of the ratification of possession of the mine, and the grant of land thereon, at the very earliest opportunity, properly authenticated and certified as explained by me when I was in Tepic. In one of my precited lettors I requested you to send me a certified power of attorney from B. F. & Co. to you, authorizing you, as the representative of the Compañia de Abio, to appoint other attornies in fact under you.

The object of this is to be able to refute the allegations of the lawyer of Walkinshaw, that you had no power to authorize me to take charge of the mine.

I remain, my dear sir,
Yours truly
JAS. ALEX. FORBES.

(Endorsed) Copy of a letter to Alex. Forbes.
Private. Oct. 28, '49. II.

F. No. 16.—J. A. Monroe. [O. H. No. 5.]

Tepic, 30th November, 1849.

James A. Forbes, Esq., Santa Clara,

Dear Sir:

We had the pleasure to write you on the 13th inst. by the steamer "Oregon," the chief object of which was to enclose a notarial copy of the grant of land by the Mexican Governmeut to Castillero, and which we hope has come safe to hand.

We have perused with much interest and attention the whole of your letters and documents received by the steamers, the "California' and "Panama," and we beg you will excuse us from minutely entering into a reply to those valuable and important papers. Suffice it to say, that we not only approve of your proceedings, but have to give you our most sincere thanks for the most energetic and able conduct in the whole affair, and we have to request that you will not hesitate continuing to take such steps as may seem to you fit for securing the mine from all attempts made by evil minded persons to impede its being freely worked for its legitimate owners.

We are glad to find that you had not been obliged to purchase Berriesa's land. This is certainly a most important point, and we trust that the document sent will be of great consequeuce in that respect, but you will of course take care that no risk is run, and you will do in this affair as your best judgment shall direct you, keeping in view that at all hazard and at whatever cost the property of the mine must

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be secured. Castillero we expect will soon be here from Lower California, and if anything can be done in Mexico he is the fittest person to procure what may be wanted. It is incredible that Mr. Walkinshaw should lend himself to such proceedings when he considered the very large capital invested in this enterprise, and when he well knows that by the mining laws no "denuncio" could possihy be heard under the circumstances in which this mine has been occupied. We trust however that these vile machinations will be by your active proceedings be put an end to.

We hope you will by the time this reaches you have got up at least a part of the apparatus, and that some of it will be soon at work. The price of quicksilver here still keeps up, and the supply as yet not abundant. Every body writes of the very high price it bears in California, and we have no doubt you will in a short time be able to supply the demand and to send us the surplus to San Blas. Trusting to the continuance of your best exertions in behalf of all concerned in the mine of New Almaden,

We are, dear sir,
Your most ob't servants,
BARRON, FORBES & CO.

(Endorsed)

BARRON, FORBES & Co.,
30th Nov. 1849.
No. 16.

F. No. 7.—J. A. MONROE. [O. H. No. 6.]

TEPIC, 30th Nov., 1849.

JAMES A. FORBES, Esq., Santa Clara.

MY DEAR SIR:

I have received your most valuable letters by the two last steamers, "California" and "Panama," the latest dates being up to the 13th of the present month, and which gives the agreeable notice of Walkinshaw's most villainous proceedings having been upset. I hope you will forgive me for not entering minutely into all the proceedings. But I can assure you that we all feel the obligation we owe to you for the very able and decisive measures you have adopted in the whole of this affair, and I recommend you to proceed without fear of disapproval, or waiting for instructions, in taking such measures as shall preserve this valuable "negociacion" from any risk from those unprincipled claimants, who have lately given you so much trouble, or from any other proceedings which may take place; being sure that such proceeding will be sanctioned by the company. We are quite of opinion with you that we should not be lulled into security from the belief that other

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proceedings will not be resorted to, and that principle will be acted upon, and every support from this will be given to what you may point out as necessary.

As you will not I hope have now to employ the large sum you expected to do in the purchase of the Berriesa's lands, you will have a large amount of funds for the object of the mines. All the drafts and orders for the value of gold have been honored.

We are glad to learn that Mr. Probst has been so active in assisting you, and it gives me in particular much pleasure to find such a good understanding betweeu you. I most earnestly hope the same friendship will take place between you and Dr. Tobin.

Notwithstanding the many difficulties you must have in transporting the cargo of the Vicar of Bray, yet I hope a part of the apparatus will soon be got up, to supply the demand of the Placeres as well as to send us some here. It is of much importance to realize as much as possible of the large capital which now lies in the mine, laid out by the Habilitadores, and to secure to the owners of Barrs something *certain* against an evil day which may sometime or other overtake us.

In new countries nothing is very certain, and I for one, (and in which I am sure you will agree with me,) am most desirous to be in possession, and to see others in possession of at least a part of the riches of this mine, which has cost me and others so much thought, and so much labor. This, I as an individual, and for the good of all, beg leave to impress strongly upon your attention.

I am, my dear sir,
Yours, very sincerely,
ALEX. FORBES.

(Endorsed) No. 8.

F. No. 9.—J. A. Monroe. [O. H. No. 7.]

Very Private. Tepic, 1st Dec., 1849.

James A Forbes, Esq., Santa Clara—

My Dear Sir:

The document sent up to you by the last steamer for the grant of the lands to D. Andres Castillero, was, by mistake, not the one meant to be sent. I find now that the proper one was registered by me in Monterey, and the original deposited there.

The one sent you was directed at foot to the Governor of California, and the one deposited at Monterey was directed to D. Andres Castillero. The difference is, that by one the delivery by the Governor was perhaps necessary to make the grant valid, whereas the other being addressed directly to D. Andres, did not require that formality, nor was any other proceeding necessary, thus making it a better document

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than the greater part of the other titles for lands in California. I fear you may have made use of the notarial copy sent—if not, you will of course apply for the copy of the one at Monterey; I however, have hopes that your well known cleverness will have enabled you to find out this mistake, which would show itself, if you had applied for the document from Monterey. And at all events you may be enabled to withdraw the one sent and substitute the other; either however I take to be as good as the usual California titles, few of which have been officially delivered or sanctioned by the local authorities.

Another difficulty however occurs. A document was made out in the City of Mexico when I purchased the Bars from Castillero, for the purpose of securing his consent and approval of the contract of Habilitacion; in this document is also inserted the grant of the two sitios, being an exact copy of what has been sent you, and directed to the *Governor*. All this will show you how that matter stands. And as I think this document may be of use to you, I send a copy of the whole, leaving you to your own good judgment, to make such use of of this document, and of what I communicate, as you shall think proper.

I shall send the document alluded to in a separate cover to Probst, Smith & Co. I am, my dear sir,

Yours, very truly,

ALEX. FORBES.

There is an approval of the Habilitacion in all the documents of the sale of the other Bars.

(Endorsed) No. 9.

F. No. 10.—J. A. Monroe. [O. H. No. 8.]

(Private) Tepic, 7th Jan'y, 1850.

James A. Forbes, Esq., Santa Clara—

My Dear Sir:

I have received by Acapulco and Mexico along with your other correspondence, your private letters to me, of the 25th and 28th of November, and beg to refer you to the letters of B., F. & Co. on the business of the Mine.

I am very sorry indeed to see that there is likely to be a difference between you and Dr. Tobin. This is a circumstance which may lead to very bad consequences, and it is strange that Tobin should throw obstacles in the way, when he sees you surrounded with so many already, and which can only tend to lessen his own profits.

It is clearly to be understood that no verbal agreement was made here with any one, nor any promises given which is not consistent with

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the contract, as it is written. His brother never was engaged, on the contrary he told me that his brother went to see what could be done in California, and if nothing offered, he would send him back to take our portraits. This might have been said as a joke, but shows that no employment at the Mine was intended for him.

No maintenance for himself, (Dr. T.) or family, was ever intended. He looked out here for a cook, and took up one for that purpose. His new contract is much more advantageous than his former one with me, as he has his per centage on the whole $\frac{2}{3}$ without limitation. I have read over this second contract with care, and it appears to me quite clear in respect to his charge at the Hacienda.

"Art. 2. The aforesaid, James Tobin agrees to direct the operations of the extraction of the Quicksilver to the best of his abilities, and is to have the said operations under his exclusive management."

This does not show that he shall have the general management of the Hacienda.

One of the causes for altering the contract, and for cancelling the limitation of his profits was, to make the contract less onerous as to the supply of ores, people, and necessaries, which you will perceive by the 4th Article. You are only bound to supply "*as amply as circumstances will allow*," whereas, by the original contract with me, it was obligatory on us to supply all these which he might require.

This in the present state of things is I consider of much consequence.

This is my opinion of what Mr. Tobin has a *right* to demand, but I am sure you will not stand on mere points of right, or risk the interests of negociacion for trifling pretentions which may be put forth. Much must be sacrificed in principle to conciliate a troublesome person, and I still most earnestly hope that your prudence will enable you to keep up cordiality between you. I shall write my opinion to Dr. Tobin, and give him my strongest advice to lay aside all vexatious pretentions, and enjoin him to proceed in good will and amity, which can only tend to his own interests and those concerned in the Mine. I hope he will listen to my advice.

The amonnt of capital is getting to be enormous, and the company are beginning to get astonished. If however you can once get under way all will be well, if you could only get a couple of cylinders up in any temporary way. They would supply the Placeres.

Whenever you have more than is wanted for that, you will of course send it down here, more or less by the steamer.

Strange as it appears to me, a Mexican merchant "Lizardo," sends up 136 flasks by this steamer, and between 2 and 300 go by next conveyance. It is shipped by B. F. & Co., as agents! We have not one bottle here; but there are still of the California Quicksilver in Sonora.

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I am glad you have taken young Mr. Thom into your house ; please remember me to him, as also to Mrs. Forbes, and your family.

I am, my dear sir, &c. Yours truly,

A. FORBES.

Webster will go up with a Pacatillo, by this steamer if he can get his things on board. If you can do anything for him it will oblige me.

A. F.

By the tenor of your letters I have hopes that you will have got rid of the villainous proceedings of Walkinshaw and his party.

I hope the document, which now goes up, (the Habilitacion, &c.,) will be useful. Castillero is still somewhere in Lower California. We have not heard from him, but he must be somewhere about La Paz.

Mr. Spence of Monterey writes me of date the 22d Nov., that he had advanced to Mr. Walkinshaw about $2,000, and informs me that although he had written him several times he had received no answer and that neither principal nor interest had been paid. I have advised Mr. Spence to inquire of you respecting this transaction.

A. F.

I hope Mr. Probst with you assistance if necessary will push the claim of the Mazatlan debt against Mr. Walkinshaw.

I have a letter from Alden, in which he speaks of Walkinshaw in strong terms. I hope you will keep poor Alden in your service ; he speaks of his former services not being properly paid for, and of his accounts not being settled.

(Endorsed) No. 10.

F. No. 15½—J. A. Monroe. [O. H. No. 14.]

Santa Clara, 29th Jan'y 1850.

My Dear Sir,

I have rec^{d} the copy of the contract of Habilitacion and as you request me to address myself to B. F. & Co on the affairs of the mine, I have now written to them upon this particular subject to which I request your earnest attention, not as regards the habilitacion, but another document which you know of.

I am, my dear sir,

Your faithfully,

JAS. ALEX. FORBES.

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F. No. 11.—J. A. Monroe. [O. H. No. 9.]

Very Private. Tepic, Feb. 3d, 1850.

James A. Forbes, Esq., Santa Clara—

My Dear Sir:

I had the pleasure to write you of date the 7th January, which went by last month's steamer, to which I refer. I have since received your letters by Reyes dated the 27th and 31st of Dec., and 8th of Jan. I shall not go minutely into the whole valuable information you give me, nor into the statements so very interesting to myself and those concerned in the mine of New Almaden. By those communications I have every reason to believe that, by your indefatigable and energetic proceedings you will be enabled to defeat all the vile attempts which have been made to rob the legitimate owners of their property.

The conduct of Dr. Tobin is inexplicable, but I think I can perceive that you are somewhat of opinion that he may be heard and protected by the Company, but I will at once put you right upon that point, and assure you such will not be the case. All here are most indignant at his conduct. You must, and will, be supported, and all I wish and hope for on your part is, that you act in a manner towards him which may enable you if possible to avoid a rupture and contentions, which may lead to bad results. You say that Dr. Tobin comes down in the next steamer, if so he will be here in a few days. This I shall not be sorry for, the matter would then be soon settled. He would most assuredly not be asked to return, nor even permitted. He has no right to desert his post, and I hope you have not given him leave of absence. I have no doubt but that you could, with Gay, Alden, and the other person you mention, do well enough for a time, and easily put up a part of the apparatus and work it until a proper scientific person can be procured and sent up to you.

It so happens that almost the whole of the "Accionistas" and "Aviadores" of the mine will be here in a few days. Mr. Barron is now here, and is attorney for those absent. La Torre comes here to visit Mr. B. Castillero has returned and is also here, so am I and William Forbes. This leaves out only the four California Bars, and I think I may venture to act for you if necessary, as you verbally told me I might. This will give us power to deal with Dr. Tobin if he comes this way, and to regulate any other matters which may be thought necessary. For my own part I have no power as you know, the management being in the hands of others, and therefore I beg you will take all I say as purely *private and confidential*, without attaching any authority to my suggestions. But of course as I am a proprietor, and in the confidence of the managers and other proprietors, my opinions and advice may be worth attending to, and be of some use to yourself as well as to them. I shall continue to write to you as long as I remain here and will be most happy at all times to hear from you.

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I wrote by last packet to Dr. Tobin as a friend and attempted to conciliate him in a mild way, perhaps he makes two much of this letter, and I think it better to send you a copy to enable you to see exactly what I have said to him. His leaguing himself with Mr. Walkingshaw is too bad. Reyes has told me of all that has passed, which is almost incredible. I am glad to find that you are peaceably to get rid of Mr. W. Mr. Tobin has sent a plan of his proposed establishment, this you must on no account allow to be put in execution. You are aware that it would never do to go about large magnificent works at once, particularly as you know the whole must be at the cost of the "Aviadores" and left for the proprietors at the end of the contract. You are acting for the Aviadores, and it is your duty to restrict the works within reasonable bounds, and to only erect temporary, and absolutely necessary, works until some funds shall be realized from the mine. However desirous that it may be that the works should be set up by Dr. Tobin, yet if he will not go on in good faith, or if he attempts to injure the company, or refuses to obey your just commands, and resists your authority, or stops or impedes the works, and thereby breaking his contract, I think he may be discharged by *you*, always taking care that you have a very clear case, and nothing left in doubt to cause litigation. But this is only my private opinion. I have no authority to empower you to do so, but it would no doubt be approved by the Company, none of whom look favorably on the Doctor's proceedings. The most effectual and safe way however would be his coming here *without leave*. He has not written by last opportunity, nor will he be written to by this Steamer.

I have every reason to believe that the documents you mention will be *found* in the City of Mexico, and as Mr. Castillero will return there they will no doubt be procured, but we are at some loss to know what is exactly wanted, and I beg you will, by next steamer, give a sketch of the documents you allude to, particularly a description of the limits of the grant. I think you must not have received the information sent you of the existence of the grant of the two sitios *directly* to Castillero, and registered in Monterey, nor am I sure if this will mend the matter. In a few days however we will again hear from you and act accordingly.

One last resort I will mention to you, and it is with great repugnance that I do so, which is, that if the Berreyesas were unreasonable and untractable, or insist on the extension of their lands to our hacienda, the company would be justified in promoting the invalidation of their own title to their Rancho.

If they make it over to any one else, and particularly to our enemies, certainly this course must be pursued. If no opposition or disclosures are made, and if the American government turn out to be liberal in conceding the Ranchos to the present holders, the Berreyesas and others

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may be left in possession, but if active measures were taken by an adverse party, many of the titles would be worthless, and I have reason to think from what came to our knowledge when I was in California, the title of the Berreyesas' is not of the best. This I throw out for your consideration, and I should think these people would do themselves no good in opposing you.

We think at present that it may be the best place to get an authenticatad copy of the approval of the Mexican government of the grant of three thousand varas given by the Alcalde on giving possession of the mine. As a doubt may be started as to whether the Alcalde acting as the "Juez de Mineria," had a right to make this grant, yet if approved of the government of Mexico before the possession of the country by the Americans, there could be no doubt on the subject. This takes in our hacienda, and unless opposed by the Berreyesas would I should think settle the question.

Castillero says such approval was given, and that on his arrival in Mexico he will procure a judicial copy of it. This is the plan we shall adopt if we hear nothing from you to alter this resolution. Since writing the foregoing I have looked over your private letter to Wm. Forbes, dated 18th October, and find you state the limits or boundaries, as follows:

"The boundaries must be expressed as joining on the north, and northwest, by lands of the Ranchos de San Vicente, and de los Capitancillos, and on the east, south, and west, by Serainia or 'tierras baldias.'"

Castillero is not certain of accomplishing this latter plan, and thinks the first, that is, the 3,000 varas the best.

There goes up by this steamer another bill against Mr. Walkinshaw and in favor of B., F. & Co., for $1,000, so that Probst, Smith & Co. have in our favor and against him:

By A. Forbes, accepted,	$1,758
B., F. & Co., about	10,000
Id. bill	1,000
In all	$12,758

I am, my dear sir,
Yours, very truly,
ALEX. FORBES.

I send you five Altas, newspapers,

(Endorsed)
Private. A. F., 3d Feb., 1850. Answered 26th Feb. No. 11.

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F. No. 24.—J. A. Monroe. [O. H. No. 9.]

Copy. Private. *New Almaden, Feb.* 26, 1850.

Alexander Forbes, Esq.,

My Dear Sir,

Your favor of the 3d instant came duly to hand, and in answer to that part of it relating to the documents sent up to me in Nov., serving as titles to this property, I will again address you "*por seperado.*"

I really did have more faith in the tact and ability of Castillero, to perceive the important objects set forth in my memorandum of what was to be done nine months ago, in Mexico by that eccentric individual, and that with the powerful influence that he was to have exercised by the efficient aid that was to be lent to him, he would meet with no obstacle to the attainment of the important documents explained in that memorandum. But Castillero has deceived himself, for he thought that boundaries were not necessary, as I shall presently shew you. He succeeded in obtaining the grant of two sitios to himself on the mining possession in *Santa Clara* while that very act of possession declares that the mine is situated on the lands of one José R. Berreyesa, five leagues distant from Santa Clara, and you will at once perceive that such a discrepancy would not fail to attract the attention of the U. S. Land Commissioners and to put the case of the mine in great risk in the judicial ordeal to which its title will be subjected.

Without troubling you with what I have so many times written and explained to you verbally, on the importance of the acquisition of the *document*, I will only say now, what it *must* be, and it is this:

1st. A full and complete ratification of all the acts of the Alcalde of this jurisdiction in the possession of the mine.

2d. A full and unconditional grant to Castillero of two sitios of land covering that mining possession, expressing the boundaries stated by me in the memorandum I left with you in Tepic. Both of these documents to be of the proper date, and placed in the proper Governmental custody in Mexico, and

3d. The necessary certified copies of them duly authenticated by the American Minister in that capital, taken and sent to me at the earliest possible moment.

You will receive my advice of the 19th inst. regarding my views of not supplying W, with any quicksilver.

Yours sincerely,

JAS. ALEX. FORBES.

(Endorsed)

Copy of letter to A. F.
Private,
IV. Feb. 26, 1850.

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F. No. 12—J. A. Monroe. [O. H. No. 10.]

Tepic, 2d March, 1850.

James A. Forbes, Esq., New Almaden,

Dear Sir,

We duly received your letters up to the 29th of January per steamer Panama, which have had our best attention, and as our friend, Dn Ysidoro de la Torre of Mazatlan has been appointed, and has consented to proceed by this steamer to California, with full powers to act in behalf of all concerned, it is needless to enter into any particulars respecting the various matters contained in your letters, as you will be enabled personally to communicate your views to him; and to arrange everything in the best manner possible. Mr. de la Torre came to Tepic to meet Mr. Barron and the others concerned in this negociation, and it was deemed necessary that some of the partners in the "Habilitacion" should proceed to New Almaden in order to consult personally with you, and to arrange respecting the future operations of this enterprise, and Mr. de la Torre has been prevailed upon, at much inconvenience to himself, to undertake the present charge.

We are sure that no one could be named more agreeable to you, than Mr. De la Torre, and have no doubt but that his presence will be most useful in sanctioning and arranging a plan of future operations, and of assisting in adjusting any difficulties which now exist, particularly as he has the full authority of the association to act, as to him shall appear necessary. Mr. De la Torre takes up with him Dr. Tobin in the hopes that he will resume his labors, and act in conformity with his duty.

Mr. Barron and Don Andres Castillero are about to proceed to the City of Mexico, and will attend to what you have recommended.

Soliciting your kind attentions to our friend Mr. De la Torre,

We are, dear sir,

Your most obedient servants,

BARRON, FORBES & CO.

(Endorsed)

No. 12.

F. No. 14—J. A. Monroe. [O. H. No. 11.]

Tepic, 11th March, [1850.]

My Dear Sir:

The Oregon's letters have just come up, and I give this a chance of reaching San Blas before the arrival of the Panama steamer. Mr. Barron and Castillero have gone off to Mexico, and I write them to-day respecting the Document you know of, which if possible will be

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procured. The news of your having got up 4 Cylinders gives us all much joy, and I gave the good news to my friends. M. La Torre don't expect this—unless he knows by the Steamer which touched at Mazatlan. You will perhaps see him and Dr. Tobin before this reaches you, who both go by this conveyance. *Let us have Quicksilver* and all will be well.

I am most happy to hear you have found an abundant mine of Limestone, this is of much importance. Your official letter about the vessel will be forwarded to the Foreign Office.

In great haste, yours truly,

A. FORBES.

(Endorsed)

Alex. Forbes, March 11th, No. 14.

F. No. 13—J. A. Monroe. [O. H. No. 13.]

Tepic, 7th April, 1850.

James A. Forbes, Esq.,

N. Almaden,

My Dear Sir:

I wrote to you by the California, dated the 23d February, and since then have received by the "Oregon" yours of the 19th of that month. I was very happy to hear that you had got up some of the Cylinders, and trust that you are at this time distilling Quicksilver. I hope Dr. Tobin will now attend without any difficulty to the superintendence of the apparatus, and am sure that you will on your part do everything in your power, to promote harmony, and forward the interests of all concerned. You will I know find great relief and pleasure by the arrival of your friend La Torre. He will during his stay take much responsibility off your shoulders, and from his decision, and conciliatory disposition, assist in smoothing many of the difficulties which surround you. Mr. Barron and Castillero have arrived in Mexico, and have every prospect of finding the documents you are aware of, and which will of course be forwarded as soon as possible.

I am, my Dear Sir,

Yours very truly,

ALEX. FORBES.

I forward a letter received from Mr. Murray of the Foreign Office.

(Addressed)

James A. Forbes, Esq., New Almaden.

(Endorsed)

Alex. Forbes, 7th April, 1850.
Answd. 28th. No. 13.

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F. No. 15—J. A. Monroe. [O. H. No. 13.]

Private. *Tepic, 6th June,* 1850.

James A. Forbes, Esq.,
Santa Clara,

My Dear Sir:

I had the pleasure to receive your letter of the 28th of April by the steamer, but of course not in time to reply by the one from Panama, which arrived the day after that from San Francisco.

I remark what you say of Dr. Tobin and the cylinders, which has caused me some uneasiness, and I wait with anxiety to know, how those he is putting up himself will succeed, which we expect to do by the steamer which ought to arrive at San Blas on the 10th inst.

I find that it has been deemed necessary to appoint an American citizen as manager of the mine, and am most happy to know that this meets with your approbation. This approval on your part I am quite sure will be estimated as it deserves, and shows to those interested in this enterprize that you do not hesitate to sacrifice your own private interests for the general benefit of the concern. For my own part, I feel most grateful and highly obliged, and the members of the house of Barron, Forbes & Co. express strongly the same feeling.

We are all convinced that whoever may be in the management of the New Almaden will receive the assistance of your knowledge and experience, and the company and proprietors cannot fail to be sensible of your services. It gives me great pleasure to hear from yourself, as well as from M. La Torre, that the closest friendship had existed between you, and that both were animated by the same desire of making the mine productive. I had the pleasure to know Mr. Halleck at Monterey, and I think a better selection could not have been made. I think he is a gentleman with whom you will be much satisfied as manager of the mine, and who I have no doubt will be glad to avail himself of your experience in whatever may be new to him.

I am very happy to hear that Mr. Walkinshaw has been settled with, and that all annoyance from that or any other quarter has ceased.

I shall avoid saying anything respecting the Berreyesa affair till the letters by the steamer come to hand, which will no doubt confirm the arrangement between them and Mr. La Torre.

I am, my dear sir,
Yours truly,
A FORBES.

(Endorsed) No. 15.

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F. No. 17—J. A. Monroe. [O. H. No. 15.]

Tepic, 10th January, 1851.

J. A. Forbes, Esq., Santa Clara,

My Dear Sir:

I was duly favored with your obliging letters of the 12th and 29th of Nov., in which you mention that I had stated some disappointment by your not writing, and allude to some other matters I have no recollection of. I have always reckoned upon you as a friend, and am well convinced that you have every disposition to promote the interests of the mining negotiation as much as is your power, which William Barron confirms in his late letters to the house.

We have nothing to fear from the lawyer Jones should he come here, but I understand he has gone to the Sandwich Islands, and is likely to make a journey to the other world. Mr. Barron has caused a most minute examination to be made in the archives in the city of Mexico, the result of which has been that, neither Alvarado nor Micheltorena were authorized to grant titles for lands in California, nor does there appear to have been any approval or confirmation of such grants as they took upon themselves to grant—so that the title of the Berreyesa's land, either by Alvarado or by Micheltorena, if opposition is made, is valueless.

This being the case, few of the California titles would be good if determined by the vigorous application of the Mexican law. Mr. Barron has procured documents to confirm this view of the case, but we have resolved not to make use of such documents except in our own defence, as we do not wish to injure any one; but in the case of the Berreyesas we are compelled to use all means in our power to counteract their proceedings or those of their abettors if they persist in their late proceedings.

If it was not that I am an interested party I would recommend to them to secure their Rancho by silence, for I am well assured that by adopting hostile measures against us they may lose it altogether. The Rothschilds have a large quantity of quicksilver on hand, and the miners thought that by competition between them and New Almaden it might come down greatly in price, and kept off from purchasing, but an agreement has been come to between both parties, by which this competition is done away with, and the price will be maintained at a fair rate.

In consequence however of the expectation of the miners few sales have been made, and little of the proceeds of sales realized, but from the arrangement alluded to it is hoped that the sales will soon be considerable. You will find by B. F. & Co.'s letter that

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your wishes have been complied with in debiting you with the $1700 in the account of your share of the sales of quicksilver.

With best respects to Mrs. Forbes and your family,

I am, my dear sir, Yours very truly,

ALEX. FORBES.

(Addressed)

JAMES A. FORBES, ESQ.,
Santa Clara,
California.

(Endorsed)

ALEX. FORBES, Jan. 10th, 1851.
No. 17.

F. No. 27—J. A. MONROE. [O. H. No. 26.]

Memorandum of documents contained in this box.

Sixteen letters from Alexander Forbes to J. A. Forbes, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 6, 14, 15, 17 and one marked B.

Three letters from Barron, Forbes & Co. to J. A. Forbes, numbered 12, 16, and marked C.

All the above in English.

Three copies of letters from J. A. Forbes, marked II. III and IV, in English.

One copy of a memorandum in the Spanish language, marked I.

One letter from Barron, Forbes & Co., J. San Francisco March 3, 1857.

JAS. ALEX. FORBES.

Also a copy of petition from Alex. Forbes, accompanied by a sketch of pertenencias of which the possession was given on the 19th of Jan., 1848, by Alcalde of San José.

(Endorsed)

List of documents contained in this box.

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DEPOSITION OF ANTONIO SUÑOL.

UNITED STATES DISTRICT COURT,
Northern District of California,

SAN FRANCISCO, December 12th, 1857.

On this day, before the District Court of the United States for the Northern District of California, &c., &c., came Antonio Suñol, a witness produced on behalf of the United States, in Case No. 420, being a cross appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: Ogden Hoffman, District Judge.

QUESTION BY COUNSEL FOR UNITED STATES.

Question.—Have you been examined heretofore in this cause?
Answer.—I have. My name is Antonio Suñol; my age is 60 years; my residence is San José.

(Document produced by S. O. Houghton shown to witness.)

Ques.—Is this the same paper shown on your previous examination?
Ans.—I believe it is; it is the same.
Ques.—Where were you when you signed it?
Ans.—In San José.
Ques.—Who else were there at the time?
Ans.—Antonio Maria Pico, Noriega and Gutierrez.
Ques.—Was there any one else?
Ans.—José Fernandez was also there; I think that was all.
Ques.—Are you certain that Gutierrez and Fernandez were both there?
Ans.—Yes. Gutierrez brought the papers, and Fernandez, as Secretary of the Ayuntamiento, was present also.
Ques.—Where did Gutierrez bring the papers from?
Ans.—From the Mission of Santa Clara.
Ques.—Who had sent him?
Ans.—Andres Castillero.
Ques.—Was Castillero not present?
Ans.—I do not remember that he was; I think not.

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Ques.—Was Padre Real there?

Ans.—I am positive he was not when I signed.

Ques.—Were these papers signed on the same day the possession was given, or afterwards?

Ans.—It was afterwards; one or two days.

Ques.—In whose handwriting is the document?

Ans.—In that of Gutierrez.

Ques.—Did you see Gutierrez write it?

Ans.—No. I know his handwriting, because he was a school master at my house for some time.

Ques.—Was it customary in those days for Alcaldes or other officers to do any official act between Christmas and New Years?

(Objected to.)

Ans.—It was customary to perform official acts at any time.

Ques.—Please look at Exhibits "X. Y.," "A. B." C. D., "M. R." and "T. R.," attached to deposition of José Fernandez, and say whether they are in the handwriting of the Gutierrez you speak of.

Ans.—I think that "T. R." and "X. Y." are in his handwriting. As to the rest, I can't be positive. Gutierrez was a man who drank a good deal, and wrote differently at different times.

I am sure that the document of possession is in his handwriting, for I signed it immediately afterwards.

Ques.—Compare the document of possession with these exhibits, and say whether there is any resemblance in the handwriting; and if so, what?

Ans.—The document of possession seems to have been written with a heavier hand. I see no similarity, but a difference between them. I have already said that Gutierrez drank a great deal, and wrote differently at different times.

I think none of the Exhibits are in the handwriting of Gutierrez. This is according to my idea of the matter.

Ques.—Are you certain that the document of possession is in the handwriting of Gutierrez, and if so, why?

Ans.—I have seen it very often, and from the appearance of the writing, I am certain it is his writing.

Ques.—How was it that the date was left blank?

Ans.—I don't know; it may have been some mistake.

Ques.—Did you read the paper before you signed it?

Ans.—I don't remember; I may or may not have read it.

Ques.—What was done with it when it was signed?

Ans.—Gutierrez took it with him.

Ques.—Why was it not handed to the Secretary?

Ans.—I don't know why; Gutierrez came with the Secretary.

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Ques.—Did Gutierrez and the Secretary go away together?
Ans.—I don't remember well; I suppose they did.
Ques.—Look at the two petitions signed "Castillero," and say if you know the handwriting of them?

(Papers shown to witness.)

Ans.—The handwriting is that of Castillero; both are in his handwriting; he wrote with one hand as well as the other.

(The answer to question No. 2, in the former deposition is read to him.)

Ques.—How does it happen that you then swore these petitions were in handwriting of Gutierrez, and now you say they are in that of Castillero?
Ans.—I don't know; it seemed to me then, I suppose, that it was Gutierrez' handwriting, and now it seems to me to be that of Castillero.
Ques.—Might you not make the same mistake as to the signatures that you have as to the body of the writing?
Ans.—I think not.
Ques.—Why not?
Ans.—Because one is less liable to be mistaken than the other; my eye-sight is not as good now as it was some years ago.
Ques.—How can he be so certain as to the handwriting of Gutierrez in the act of possession, and yet be uncertain as to same handwriting in the petitions.
Ans.—At that time I knew his handwriting well; he was the man who did the writing for Castillero; and because Gutierrez said at the time that he had written it.
Ques.—Did not Gutierrez bring the two petitions at the same time with the act of possession?
Ans.—No. The petitions had previously been made.
Ques.—Where were they?
Ans.—I don't know.
Ques.—Were they not in the Alcalde's office?
Ans.—They probably were; I don't know.
Ques.—By whom was the act of possession composed?
Ans.—It was dictated by Castillero.
Ques.—How do you know this?
Ans.—Because there was a draft of it made at the mine.
Ques.—Who made the draft?
Ans.—Castillero dictated it.
Ques.—Who was present when it was dictated.
Ans.—Antonio M. Pico, Noriega, myself, Fernandez and Padre

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Real, and Castillero. There were also some workmen there, and no one else.

Ques.—Was not Berreyesa or Justo Larios there?

Ans.—After we had commenced making the draft Sergeant Berreyesa came up.

Ques.—Why was not the Secretary employed to write the draft instead of Gutierrez?

Ans.—I don't know. The Secretary was there, and he was paid for it.

Ques.—Did you see him paid?

Ans.—Yes, sir; in my house when the papers were brought there to be signed.

Ques.—What else did you do at the mine?

Ans.—Nothing; possession was given; we were there looking around, and then we returned.

Ques.—What surveyor had you there?

Ans.—There was none; we were all surveyors.

Ques.—What measurements were made?

Ans.—None; we only prepared the papers, and gave possession, subject to the approval of the Government.

Ques.—What Government?

Ans.—The National Government of Mexico.

Ques.—Was this put in the draft?

Ans.—Yes, sir.

Ques.—Read it and see if you can find it?

Ans.—What I say is the same as the paper says, "The general government of mining," the ordenanzas of mining, means the same thing as I meant by my first answer.

Ques.—Were any measurements made at the mine?

Ans.—No, sir.

Ques.—Were there any stakes driven; if so, by whom?

Ans.—I don't remember that there were any stakes driven.

Ques.—Did you go into the mine, and what did you do there?

Ans.—We sat down, and were looking around.

Ques.—What did Castillero do down there?

Ans.—Nothing; he was looking around as we were.

Ques.—In what manner did the Alcalde give possession?

Ans.—He said he gave possession in the name of the Nation of the number of varas expressed in the draft.

Ques.—In what manner did they designate the land?

(Objected to.)

Ans.—They just walked around; I do not mean that they went round the limits; we walked about.

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Ques.—How long have you resided in California?
Ans.—40 or 41 years; all the time at the Pueblo of San José.
Ques.—When did you first hear of this mine?
Ans.—In the year 1824.
Ques.—What is the tradition of the country as to its first discovery?

(Objected to as new matter, not admissible on cross-examination.)

Ans.—Myself and Chaboya put a mill there on the stream, and tried to get silver out of it; this was in the year 1824.
Ques.—Was it not generally known ever since 1824 that there was a mine there?
Ans.—It was generally known, but it was not known of what kind it was.

(Foregoing question and answer objected to.)

Ques.—Was it known that the Indians resorted to it?

(Objected to.)

Ans.—The Indians went there to get paint; they had an idea that the place was sacred. They used to drop feathers there or other little offerings, and they used to say the devil was there.
Ques.—Had the place any name?

(Objected to.)

Ans.—It was called "*Pulli*" "*Pooyi.*"
Ques.—When did you first know there was quicksilver there?
Ans.—The first time was when we were examining together, Castillero and myself; we put some of the ore on a hot brick, and drops of the quicksilver ran out. This was done at the Mission of Santa Clara.
Ques.—Who was present at this experiment?
Ans.—Castillero and I were there alone. Padre Real was attending to other matters. After the experiment was made, he and others saw the result. It was generally known and spoken of after that.
Ques.—Did you hear at that time of any partnership between Castillero, Padre Real and others, to work the mine?
Ans.—I did.
Ques.—Was it formed before or after the possession was given?
Ans.—I don't know whether it was before or after; I think the company was not formed at that time?

(Foregoing question and answer objected to.)

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Ques.—Did you hear Castro or Robles speak of having any interest in the mine before the possession was given ?

Ans.—I don't remember whether I heard them speak of it before possession was given; afterwards I did.

Ques.—Have you said that Padre Real was present when possession was given ?

Ans.—Yes, sir.

Ques.—Where was Gen. Castro at the time of the possession ?

Ans.—I don't know. He was at the Mission when we made the assay, and found the quicksilver.

Ques.—Was he living at the Mission ?

Ans.—He was with the troops; he came up with the troops some fifteen or twenty days before we made the assay.

Ques.—How long was it after the assay before the partnership was spoken of ?

Ans.—I don't remember how long; I think it was a short time afterwards.

Ques.—Was Gen. Castro at the Mission when you went to give possession ?

Ans.—I think he was not.

Ques.—About how long after possession was given, was it that Castro came to the Mission ?

(Objected to, as assuming a fact not in proof.)

Ans.—I think it was a short time.

Ques.—How long did the troops remain at the Mission ?

Ans.—I think fifteen or twenty days; when they marched to Monterey.

Ques.—Was it at the end of 1845 or beginning of 1846, that you made the assay ?

Ans.—It was about the end of 1845.

Ques.—Can you recollect any other circumstance by which you can fix the date of the assay ?

Ans.—I think it was at the end of November or beginning of December.

Ques.—Have you any means of remembering the day when possession was given ?

Ans.—Nothing particular.

Ques.—Was it before or after the rains ?

Ans —I think it had rained a litle.

Ques.—At what time do the rains usually set in ?

Ans.—In October, November and December.

Ques.—Does it usually rain in December ?

Ans.—As a general thing, December is a rainy month ?

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Ques.—What sort of weather was it when you went to the mine; was it muddy and soft, or hard and dry; was it hot or cold?

Ans.—It was a little soft and moist. The weather was temperate, neither hot nor cold. We all went on horseback.

Ans.—Don't you remember that Gutierrez went on foot?

Ans.—He went on horseback and returned on foot.

Ques.—Had you had any thing to do just before you went to give possession?

(Objected to.)

Ans.—No.

Ques.—Had you seen much of Castillero before that time?

Ans.—Yes, sir.

Ques.—What had you to do with him?

Ans.—Nothing, except that we were acquaintances.

Ques.—Who told Castillero that there was a mine there?

(Objected to.)

Ans.—A person called "El Chato Robles."

Ques.—Which Robles was it?

Ans.—Teodoro Robles, one of those who was in the partnership.

Ques.—How long was this before possession was given?

Ans.—I don't know; I can't say.

Ques.—What sort of a mine did he tell him it was?

(Objected to.)

Ans.—A silver mine.

Ques.—Did Castillero stay at your house when he was in the country?

Ans.—He sometimes came to my house.

Ques.—Did you have much conversation with him about the mine before you gave possession?

Ans.—I may have had; I don't remember. I told him about my having worked the mine in 1824.

(Question and answer objected to.)

Ques.—Did Castillero show you any stones from the mine?

Ans.—He did.

Ques.—What did he say about them?

Ans.—Various things; sometimes he said it was gold, sometimes silver; finally he ascertained it was quicksilver.

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Ques.—Do you remember any experiments made with a gun-barrel?

Ans.—I don't know of any with a gun-barrel; there were some with retorts; they were the old fashioned stills to make liquor.

Ques.—Was it before or after possession was given that Gen. Castro came to the Mission with the troops?

Ans.—I think it was before, but I do not remember.

Ques.—How long was it after Castillero showed you the stones that it was discovered to be quicksilver?

Ans.—He was constantly in the habit of showing me stones every Sunday I went to the Mission. I can't remember.

Ques.—Was any experiment made with stones or earth at the mine at the time of the possession; any washing with a plate?

Ans.—I do not remember that it was done at the mine; it was done at the Mission after coming from the mine.

Ques.—What did you do it for?

Ans.—To ascertain for certain what it was.

Ques.—What did you suppose it to be?

Ans.—We made that assay to see if it was quicksilver. There had been various opinions; some thought it gold; some silver.

Ques.—What did you find it to be?

Ans.—The washing was before we went to the mine.

Ques.—Did you not say it was after your return from the mine?

Ans.—No. All the assays were before we went to the mine.

Ques.—At the time of giving possession, how much quicksilver had you ever seen from that mine?

Ans.—I never saw but one small drop.

Ques.—How long after, then, was this abundant extraction by means of the still?

Ans.—It must have been some days after; I cannot recollect; I am pretty certain that it was after possession was given.

Ques.—How long before you gave possession was it that you saw the little drops of quicksilver?

Ans.—I cannot tell; it must have been a few days before.

Ques.—Have you not said that up to the time of going to the mine, you had only seen one little drop? and do you repeat that answer now?

Ans.—I think I have never seen but that one drop.

Ques.—How then did it happen that the words, stating that "much silver had been produced at the mine, according to the samples at the Juzgado," were inserted in the act of possession?

Ans.—Because they had taken out several stones, and had found them to contain a large proportion of quicksilver. This paper does not state that they had obtained liquid silver.

Ques.—Look at the paper where it states that the mine had produced an abundance of *liquid quicksilver*, and now say how those words came to be inserted when you had only seen a drop?

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Ans.—I cannot remember whether it was before the possession or after, that this abundant yield took place. I have already said that I could not remember.

Ques.—Did you know Alexander Forbes in this country?

Ans.—I did.

Ques.—Did he not stay at your house.

Ans.—Not at my house. He staid at the mission; don't know whether he staid at the house of James Forbes or not.

Ques.—Did not Alexander Forbes leave with you some papers concerning the mine?

Ans.—He left some concerning a sale, but not concerning the mine.

Ques.—Did not the sale relate to the mine?

Ans.—It did.

Ques.—What became of those papers?

Ans.—Señor Laurencel can answer that.

Ques.—What did he tell you about them?

(Objected to.)

Ans.—He did not tell me, but as they were open I read them myself.

Ques.—What else was there amongst the papers but the sale?

Ans.—I don't recollect.

Ques.—What became of the papers?

Ans.—I gave them to Mr. Alexander Forbes, to whom they belonged.

Ques.—Who was the vendor in this act of sale?

Ans.—It was an act of sale by Padre Real to Alexander Forbes.

Ques.—Was this paper the act of Padre Real in his own right or that of Castillero through Real as his attorney?

Ans.—I do not remember.

Ques.—Did you make a copy of the papers left with you by Mr. Alexander Forbes?

Ans.—I did.

Quss.—Did Mr. Alexander Forbes know it, or was it done with his consent?

Ans.—No, he knew nothing of it. It was done for the purpose of employing a boy, to practice him in writing.

Ques.—Did you keep the copy some time?

Ans.—It remained in my house some days.

Ques.—Did it not remain some years?

Ans.—No, sir.

Ques.—What became of it?

Ans.—I showed it to Mr. Laurencel, and he carried it off.

Ques.—When did Mr. Laurencel come to this country?

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Ans.—In 1850 or 1851.

Ques.—When did Alexander Forbes leave the papers with you?

Ans.—In 1846 or 1847.

Ques.—Did you not then retain it several years?

Ans.—It remained among my papers; I thought it of no value. One day he accidentally told Mr. Laurencel he had such a paper, and showed it to him. He carried it away without my consent, and has not returned it to me.

Ques.—Why did you say you kept it only a few days?

Ans.—I meant the original and not the copy.

Ques.—Was you in the Pueblo when the Americans took the place?

Ans.—I have been there all the time up to the present.

Ques.—How long after the hoisting of the American flag at Monterey was the Pueblo taken?

Ans.—I don't remember.

Ques.—Was it about the time they took Monterey?

Ans.—Those were matters which did not interest me much, I don't remember.

Ques.—Was not Mr. Webér the commander of the American forces who took the place?

Ans.—He was not commander of any thing. He was a leader of some people. There was nothing for them to take. They came in whenever they chose.

Ques.—Did not the Americans fortify a house, the Juzgado?

Ans.—With stockades. But I don't remember what year it was. I think it was 1846. It was then that the Americans took the country finally, and have continued to occupy it ever since.

Ques.—How long did the Americans occupy the Juzgado as a fort?

Ans.—A month or two; certainly one month.

Ques.—Were not the Alcalde's office and papers in the same building?

(Cross-examination waived by claimant's counsel.)

(The signature the deposition waived by consent of both counsel.)

DEPOSITION OF JOSÉ NORIEGA.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA.

SAN FRANCISCO, December 12th 1857.

On this day, before the District Court of the United States for the Northern District of California, came José Noriega, a witness produced

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on behalf of the United States, in case 420, being a cross appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by E. F. Dunn, a sworn interpreter:

PRESENT:—Ogden Hoffman, U. S. District Judge.

QUESTIONS BY COUNSEL FOR THE U. S.

What is your name, age and residence?

Ans.—José Noriega; my age 37; I reside in the Pueblo of San José, Santa Clara county.

Ques.—Have you been examined before in this case?

Ans.—Yes; in the Commission.

Ques.—Do you remember a paper shown to you with Antonio Maria Pico as Alcalde and your own as witness?

Ans.—I do.

Ques.—Do you know your own signature when you see it?

Ans.—Yes, sir; I ought to know it.

Ques.—Do you know the difference between your signature when written by others and when written by yourself?

Ans.—If it was very well done I might not know it.

Ques.—Has your signature ever been witten by others so that you would not know it from your own?

Ans.—I do not know whether any one else has written it or not.

(Exhibit marked "Posesion de la mina," produced by S. O. Houghton, shown to witness.)

Ques.—Look at this document, and at the last instrument purporting to be signed by Antonio M. Pico, Antonio Suñol and José Noriega, and say whether it is the same paper shown you at a former examination.

Ans.—I will look to see my signature. I can't say if it is the same paper or not. This is my signature. I believe this to be the same paper.

Ques.—Do you know anything about the possession of which that paper speaks?

Ans.—I signed that paper, and I believe it to be an Act of Possession.

Ques.—Do you know anything of the possession given by Antonio M. Pico, of which that paper speaks?

Ans.—I was present at the mouth of the mine when possession was given.

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Ques.—Was it customary for the Alcalde or other officer of Government to do any official act between Christmas and New Years?

(Objected, as being entirely irrelevant. Objection noted.)

Ans.—I do not remember. I do not know of such a custom. I don't know what they were in the habit of doing between those days.

Ques.—What time of the year was it when you went to the mine io give the possession spoken of?

(Objected to as irrelevant.)

Ans.—I do not know; I think it was at the end of summer.

Ques.—Was it wet weather or dry?

Ans.—There was sunshine. I think it was the beginning of winter or end of summer.

Ques.—Had there been rain that year?

Ans.—The rains had not commenced, but I know it was near the beginning of winter.

Ques.—Who went with you to the mine?

Ans.—Antonio M. Pico, Antonio Suñol, Padre Real, José Fernandez and some others whom I don't remember.

Ques.—What surveyor went with you?

Ans.—None.

Ques.—What instruments had you with you?

Ans.—I think we had none.

Ques.—What measurements were made?

Ans.—None were made.

(All the foregoing questions as to what was done objected to, the record being best evidence.)

Ques—Were any lands laid off by driving stakes?

Ans.—The Judge commanded them to take a certain number of varas, but they drove no stakes.

Ques.—How many varas?

Ans.—I do not remember well; I heard thousands of varas spoken of. I don't know whether it was 3,000 or 1,000.

Ques.—Did you see any examination made, and was anything done in the cave; and if so, what?

Ans.—There was a well ("poso") in front of the cave; I don't know how deep the well was. The cave was natural. Señor Castillero had a plate there; he had earth in it moistened with water to see what he could find.

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Ques.—Did you know at the time you went there what kind of metal was in the mine?

Ans.—Silver and gold.

Ques.—At that time was the mine known or thought to contain any other metals than silver and gold?

Ans.—I believe not; I am not sure. I think it was only supposed to contain silver and gold.

Ques.—How long after this was it before you knew there was quicksilver in the mine?

Ans.—I do not remember. I know it was not a great while. There was an assay in Santa Clara of various things, and quicksilver was discovered.

Ques.—Who made those assays?

Ans.—No one but Andres Castillero made assays that I know of.

Ques.—When Castillero was washing this earth, did he find anything?

Ans.—Nothing but earth very much colored—red.

Ques.—Were any of the neighbors present there? Justo Larios, Berreyesa, Cook, &c.

Ans.—I do not remember having seen any.

Ques.—Did you sign any paper at the mine?

Ans.—No, sir, I did not.

Ques.—How long after you were at the mine was it before you signed any paper relating to the possession?

Ans.—Some days had passed; I don't remember how many. I signed it at the house of Antonio Suñol.

Ques.—What kind of paper was it?

Ans.—I don't remember; it was white paper, that's all I know; it was 12 or fourteen years ago.

Ques.—Name all the persons you can remember who were then present when you signed that paper.

Ans.—Don Antonio Maria Pico, Antonio Suñol, José Fernandez, and one Gutierrez, whose first name I don't remember.

Ques.—Were there any others?

Ans.—Padre Real; I don't remember any others.

Ques.—Were you taken prisoner during the war with the Americans, and where?

Ans.—At Sacramento, on the 9th or 11th of June, 1846.

Ques.—Do you remember how long they kept you, and when you got home?

Ans.—I got home about the 18th of August.

Ques,—Is your recollection clear on the subject; and if so, from what circumstance?

Ans.—I remember it distinctly; it was a few days after the feast of Santa Clara.

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Ques.—On what day is that feast celebrated?

Ans.—I don't know whether it was the 12th or 16th.

Ques.—Where were the Americans at that time? If they were in San José what were they doing?

Ans.—They had taken San José; they were passing around through the city.

Ques.—Where had they their cuartel?

Ans.—It was in a place called La Guardia.

Ques.—Was that the same place as the Juzgado?

Ans.—In the same house as the cuartel was the Juzgado.

Ques.—Was the cuartel and Juzgado fortified; and in what manner?

Ans.—There was a ditch and stockade.

Ques.—Was this Juzgado the place where the archives of the Alcalde were kept?

Ans.—It was.

Ques.—Did you learn how long the Americans had been there?

Ans.—I don't know on what day they had come.

Ques.—Did any one tell you at that time how long they had been there?

Ans.—I heard they had been there some days.

(The last question and answer objected to.)

I don't know how long they had been there.

Ques.—Did you see any one acting as Alcalde at that time?

(Objected to.)

Ans.—John Burton was Alcalde.

Ques.—Did you find any native Californians acting as officers when you got back?

Ans.—I found at first John Burton, Alcalde, and after that I—do not know for what reason—they put in Pedro Chaboya.

Ques.—Please to state all that was said and done at the mouth of the mine on the occasion of giving the possession referred to.

(Objected to.)

Ans. We arrived there; we remained a little while; I was laying under a tree near the mouth of the mine; they were speaking about the manner of taking the possession. They arranged that the possession should be taken of a certain number of thousand varas in each direction fromthe mouth of the mine. The Alcalde said—you take this number of varas in each direction. After that we mounted our horses and went home.

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Ques.—Who assisted Castillero in the examination of the cave and in washing the earth ?

Ans.—Castillero did it alone in a plate.

Ques.—Did you see any liquid quicksilver at the mine, at that time ?

Ans.—I did not see any.

Ques.—Had you seen any before that time ?

Ans.—I had never seen any, and did not know it in California.

Ques.—Have you repeated every formality and everything that was done.

Ans.—There is not much to repeat ; I have told all they did.

(No examination on part of Claimant's Counsel.)

(Signature of deposition by witness waived ; also the reading of it to him.)

Taken in open Court, this 12th December, 1857, before me,

OGDEN HOFFMAN,
Judge.

ORDER TO MAKE COPIES.

At a stated term of the District Court of the United States of America, for the Northern District of California, held at the court house in the city of San Francisco, on Tuesday the first day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Present—The Honorable Ogden Hoffman, District Judge.

ANDRES CASTILLERO,
vs.
THE UNITED STATES,

On motion of the Dist. Atty. and the counsel for claimants consenting thereto, ordered that the clerk of this court make copies of the original documents filed in this cause, on Saturday last, and that he furnish a copy of the same to the counsel of each of the parties in this cause.

OGDEN HOFFMAN,
Dist. Judge.

Filed Dec. 1st, 1857.

JOHN A. MONROE, *Clerk.*
BY J. EDGAR GRYMES, *Deputy Clerk.*

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DEPOSITION OF CAPT. JOHN PATY.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, December 15th, 1857.

On this day before J. Edgar Grymes, Special Commissioner and Referee appointed by the District Court of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Capt. John Paty, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT: Frederick Billings, Esq., for Claimant, and E. W. F. Sloan, for the United States.

QUESTIONS BY E. W. F. SLOAN, ESQ.

Question 1.—What is your name, age, and place of residence?

Answer 1.—My name is John Paty, 50 years old, and I reside in Honolulu, Sandwich Islands. I am a master mariner.

Ques. 2.—Where were you during the year 1846?

Ans. 2.—I was on this coast most of the year. I made a voyage to Mexico during the same year from California, on board the bark Don Quixote, of which I was master.

Ques. 3.—From what point in California, to what point in Mexico, did you make that voyage?

Ans. 3.—From Monterey to Acapulco.

Ques. 4.—At what time did you sail and at what time did you arrive in Acapulco?

Ant. 4.—I sailed on the 3d of April, 1846, from Monterey, and arrived at Acapulco on the 21st of the same month.

Ques. 5.—What was the object of that voyage?

Ans. 5.—It was to take a passenger and his servant to Acapulco.

Ques. 6.—Who was that passenger?

Aus. 6.—Andres Castillero. I understood that he was a Mexican officer.

Ques. 7.—Did you land him at Acapulco?

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Ans. 7.—I did.

Ques. 8.—What became of him then?

Ans. 8.—I do not know; but I understood he went to Mexico.

Ques. 9.—Did you keep a log of the voyage?

Ans. 9.—I did. It was burnt in this city, in the big fire of May, 1851.

Ques. 10.—Look at document marked "J. P. No. 1," now attached to this deposition, and state what it is, and by whom written?

Ans. 10.—This is extracts from the journal kept on board of the Don Quixote and written by myself. This journal was my wife's private journal, and from that journal and from my private papers I made these extracts.

Ques. 11.—Are you able to state that this is a correct memorandum?

Auns. 11.—Yes, sir.

(The document "J. P. No. 1," is objected to by claimant's counsel.)

Ques 12.—Look at document marked "J. P. No. 2." now attached to this deposition and state what it is and by whom written.

Ans. 12.—It is a copy of a letter written by myself, addressed to T. O. Larkin. It was written in Monterey, dated "April 2d, 1846."

Ques. 13.—Look at document marked "J. P. No. 3," now attached to your deposition and state what it is, whether it came into your possession, and when.

Ans. 13.—This is a receipt from the Post Office in Acapulco, for letters mailed there by myself on the 22d of April, 1846. Said letters were taken down by me in the Don Quixote from Monterey.

Ques. 14.—How long had you been in Monterey prior to setting out on that voyage?

Ans. 14.—I do not know for certain, but think about two weeks.

Ques. 15.—Who chartered the vessel for that voyage?

Ans. 15.—It was chartered by the government. Thos. O. Larkin was my agent.

Ques. 16.—Was there any other Port of Entry except Monterey, at which a veasel could clear in Upper California?

Ans. 16.—I believe not.

Ques. 17.—Do you know of any other voyage having been made from Upper California to the western coast of Mexico during two months preceding your departure on that voyage?

Ans. 17.—I do not.

Ques. 18.—Can you state with confidence that no voyage of that kind was made during the two weeks prior to your departure?

Ans. 18.—I can. They had been in treaty for another vessel before they chartered mine; but she did not go.

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Ques. 19.—Are you acquainted with James McKinlay?

Ans. 19.—I am.

Ques. 20.—Have you any knowledge of his having made a voyage from California in the Brig Juanita to Mazatlan, at the time of your trip to Acapulco?

Ans. 20.—I have not. He made a voyage there I know, but I think it was sometime prior to mine. I do not know when she reached Mazatlan.

Ques. 21.—Did you touch at any intermediate point on your voyage from Monterey to Acapulco?

Ans. 21.—I did not.

Ques. 22.—Look at the document marked "J. P. No. 4," now attached to your deposition, and of which the following is a translation:

{ SEAL }

The Citizen Juan Augustin Marin, Capt. of Frigate of the National Navy, Commanding the Navy of the Southern Department, and Captain of the Port of Acapulco.

I certify that by the precedings documents which exist in the office under my charge that in relation to the Kanaka Bark Don Quijote, it shows that this vessel anchored in this Port the 21st of April, 1846, coming from Monterey in ballast. Her Captn. John Paty, in 17 days of navigation, brings passenger the Captn. Dn Andres Castillero, Commissioner for the Alta California, near the Supreme Govt. This Bark sailed for the Sandwich Islands the 18th day of May, of the sameyear, with a cargo of produce of the Country, and were passengers Enrique Malekembaker a German, and two young Mexicans Jacinto and José Turque.

Acapulco, July 10th, 1857.

J. AUGUSTIN MARIN.

and state whether the same as now translated to you contains the truth according to your recollection of the facts.

Anst. 22.—All as to my arrival is truc. All the document is true, except that I did not depart for the Sandwich Islands from Acapulco, but returned to the Coast of California.

It is not correct as to the passengers who returned with me.

(Counsel for Claimants objects to the introduction of documents "J. P. No. 2, No. 3, and No. 4," and questions connected with them.)

Ques. 23.—Look at the document marked "J. P. No. 5," now

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attached to your deposition, and of which the following is a translation, to wit:

{ SEAL } Carlos Horn, first Lieutenant of the National Navy and Captain of this Port.

I certify that according to the documents existing in the archives of the office of the Captn of the Port, The Hawaiian Bark Don Quixote, Capt. John Paty, anchored in this roadstead of San Blas, the thirteenth day of April, eighteen hundred and forty-six, coming from the Port of Monterey, in the Alta California.

(Signed) CARLOS HORN.

{ SEAL } Ygnacio Echagaray, Colonel in the Army, Political Chief and Commandant General of this Canton:

I certify that the signature which precedes is the same which is used in all the public and private acts by the citizen Carlos Horn, Captain of the Port of San Blas, and Military Commandant of the said place, and full faith and credit can be given to the same, and that it may be used when necessary.

I have certified this under my hand and seal the 18th day of July, 1857.

(Signed) Y. ECHAGARAY.

and say whether that certificate as now translated to you, contains the truth according to your knowledge of the facts.

(Counsel for Claimants objects to the introduction of document "J. P. No. 5," and the questions connected with them.)

Ans. 23.—It does not. I went direct from Monterey to Acapulco. I stopped there on my way up to Monterey, about the middle of June. I was also in there with the Don Quixote in April, 1845. I do not recollect being there with the Don Quixote at any other times.

Ques. 24.—How long did you remain at Acapulco in 1846, before you left that port for Upper California?

Ans. 24.—I remained there from the 21st of April to the 18th of May.

Ques. 25.—For whom or for what were you waiting there?

Ans. 25.—Waiting for Don Andres Castillero, whom I was according to my charter to bring back if he wanted to come. I waited so long as I have mentioned, and then heard that he would meet me at Mazatlan or San Blas. I touched at both places but heard nothing of him, and then came on to California.

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I think Castillero left Acapulco about three days after our arrival. I remember the circumstance of his servant coming on board for his luggage. I have never seen him since.

CROSS-EXAMINATION.

Ques. 26.—Did you know anything of the business which took Castillero to Mexico, or for what purpose he went there?

Ans. 26.—I did not.

Ques. 27.—Did he take anything down with him from California?

Ans. 27.—He took no merchandize, he had some specimens of ore with him. I think it was silver ore. I do not know what other kind he had.

Ques. 28.—When you expected him back from Mexico, did you expect any others to come with him, who would in your vessel come to California with him?

Ans. 28.—I expected that there would have been passengers, but did not expect them particularly with him.

Ques. 29.—Did you hear anything concerning his bringing up miners to California; if so, from whom?

Ans. 29.—I heard something about it from Mr. Larkin, my agent; I mean about bringing up mining apparatus. I do not recollect what it was.

Ques. 30.—Did you anticipate a renewal of your charter, or any other voyage to Acapulco, on account of any mining business, or any business connected with Castillero?

Ans. 30.—I did not.

Ques. 31.—Did Castillero speak English at the time of the voyage down?

Ans. 31.—He did not. He spoke Spanish.

Ques. 32.—Did you speak Spanish at that time?

Ans. 32.—I did not speak it well. I could not carry on a conversation freely.

Ques. 33.—Did you have much conversation with Castillero?

Ans. 33.—I did not. I only spoke a very few words.

Ques. 34.—Did Castillero speak with you at all on the subject of his visit to Mexico?

Ans. 34.—I do not remember that he did.

DIRECT RESUMED.

Ques. 35.—Did you see the ore which Castillero took with him on your vessel?

Ans. 35.—I did.

Ques. 36.—Describe how much there was of it.

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Ans. 36.—I do not remember exactly. There was about a bucket full, a common bucket. I do not know that I can distinguish cinnabar from other metallic ore. The ore that Castillero took down was of several kinds. I am no judge of it. I saw among it some ore which I took to be silver. That ore I think I knew.

Ques. 37.—Did you hear of the war between the United States and Mexico, before you sailed from Acapulco?

Ans. 37.—I did. I think it was 2 or 3 days before I sailed.

Ques. 38.—In what form did the news of the war reach you?

Ans. 38.—I merely heard that a battle had been fought, and that the Americans had been defeated, and that war was existing.

JOHN PATY.

Sworn to and subscribed before me this 15th day of December, A. D. 1857.

J. EDGAR GRYMES,
Special Commissioner.

Filed Dec. 16, 1857.

JOHN A. MONROE,
Clerk,
By J. EDGAR GRYMES,
Deputy.

EXHIBIT "J. P., No. 1."

INFORMATION FOR WHOM IT MAY CONCERN.

First.—In April, A. D., eighteen hundred and forty-six, I chartered the bark Don Quixote, under my command, to the Mexican Government at Monterey, for a voyage to Acapulco and back to Monterey. Thomas O. Larkin acting as my agent.

Second.—I sailed from Monterey on the fourth day of April, A. D. eighteen hundred and forty-six, bound for Acapulco.

Third.—Don Andres Castillero and his servant, or companion, ("Lazaro Piña I think was his name,) Mrs. John Paty, child and servant, were passengers on board.

Fourth.—We arrived at Acapulco on the twenty-first day of April, A. D. eighteen hundred and forty-six; no person left the vessel or came on board during the passage.

Fifth.—Don Andres Castillero and his servant left Acapulco for

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Mexico on the twenty-fourth day of April, eighteen hundred and forty-six.

Sixth.—I agreed to wait twenty days at Acapulco for Don Andres Castellero, and after waiting until the 16th of May, I heard that he wished to meet me at Mazatlan, consequently I left Acapulco on the 18th of May for that place and St. Blas.

Seventh.—Capt. John Vioget, Mrs. John Paty, child, and servant were passengers from Acapulco.

Eighth.—Touched at San Blas on the 4th June, and left on the six for Mazatlan.

Ninth.—Arrived at Mazatlan on the 9th June, where I waited until the 16th June, and not hearing anything of Den Andres Castillero, I concluded not to wait for him any longer; took on board Mrs. Anita Castanares, daughter of Rafel Gonzales, of Monterey, and Mrs. Carmen, daughter of Feliciano Sobreano, of Monterey, and made sail.

Tenth.—Touched at Cape St. Lucas on the 21st Sune, and sailed again the same day for St. Pedro.

Eleventh.—I have not had any information from Don Andres Castillero or his servant, either at San Blas or at Mazatlan.

Tmelfth.—I arrived at St. Pedro on the 27th July, and sailed again on the 9th of August for St^{a}. Barbara.

Thirteenth.—Arrived at St^{a}. Barbara on the 13th of August, and sailed again on the 16th for St. Lewis Obispo.

Fourteenth.—I arrived at St. Lewis on the 19th, and sailed again for Monterey on the 23d of June, where I arrived on the 27th.

Fifteenth.—I have enclose a receipt from the post office, for letters mailed at Acapulco.

Sixteenth.—The charter, for the Don Quixote, was paid by the Government, at Monterey, part in advance, and the balance after my return.

Honolulu, 9th July, 1857.

JOHN PATY.

CONSTLATE OF THE UNITED STATES OF AMERICA,
HONOLULU, HAWAIIAN ISLANDS.

On this 9th day of July A D 1857, personally appeared before me the undersigned Vice Consul of the United States of America at Hon-

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olulu Hawaiian Islands Capt. John Paty to me well known and who subscribed and made oath to the foregoing statement written upon three pages, and I hereby certify that the foregoing statement of Capt John Paty is entitled to full faith and credit.

{ SEAL } In testimony whereof I have hereunto set my hand Consular Seal, at Honolulu H. I. this ninth day of July A D 1857.

GEO A LATHROP
U S V Consul.

EXHIBIT "J. P. No. 2."

COPY.

DEAR SIR

Agreeable to our contract relative to the charter of the Bark Don Quixote I have to inform you that I am now ready to sail, and am only waiting for the passenger or passengers.

You know it is of much importance for me to return back to this coast as soon as possible and unless the contract is complied with by or on the 4th day of this month I shall consider it null and void and shall require damages accordingly.

T. O. LARKIN ESQ.
Monterey April 2, 1846.

Your Obdt Servt
JOHN PATY.

(Endorsed) Copy of a letter to T. O. Larkin
Monterey Apr 2 '46

EXHIBIT "J. P. No. 8."

Satisfizo p^{r}. francat^{a}. en esta admon. D^{n}. Juan Paty, capit^{n}. de la Barca Quijote, de la Band^{a}. se S^{n}. Luichi lo siguiente....." asaver "_____"

Por un pliego con 14 onzas, p^{a}. Vera cruz.....	$ 8 y 4 r^{s}.
Por uno de una onza p^{a}. dho. punto.....	" 1 " 0
P^{r}. una carta p^{a}. los Estados unidos d^{l}. N.....	" 0 " 4
Por un impreso p^{a}. los mismos.....	" 0 " 1
Son.....	$10 " 1

Admon. de Correo de Acap^{co}. Ab^{l}. 22 1846

JOSE BRACHO.

(Entd)
(Endorsed)
Receipt for letters mailed at Acapulco for Mr Larkin 1846.
(In pencil) Monterey

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EXHIBIT "J. P. No. 4."

(CERTIFICATE OF THE CAPITAN DEL PUERTO DE ACAPULCO.)

El Ciud°. Juan Agustin Marin Capn de Fragata de la Armada Nacional Comandante de Marina del departamento del Súr y Capn del Puerto de Acapulco

CERTIFICO: q por los antecedentes q obran en ésta Oficina de mi cargo y Aduana Maritima, con relacion a la Barca kanaha "D Quijote," consta q ésta buque fondeó en este Puerto el veinte y uno de Abril de mil ochocientos cuarenta y seis (1846) procedente de Monterrey en Lastre su Capn Jhon Paty con diez y siete dias de Navegacion, de pasaje el Capn D. Andres Castillero comicionado por la Alta California serea del Sup^mo. Gobierno. Esta barca dio la Vela para las islas Sandavoich el diez y ocho de Mayo del mismo año con su carga frutos del pais, y de pasaje á Enrique Malekembuhn Aleman y dos Jovenes Mejicanos Jacinto y José M^a. Jurque.

Acapulco Julio diez y ocho de mil ochocientos cincuenta y siete.

J. AGUSTIN MARIN

CONSULATE OF THE UNITED STATES,
AT ACAPULCO, MEXICO.

This is to certify that the foregoing stgnature of Sefior J. Augustin Marin is personally known to me to be his true signature and as such is entitled to full faith and credence.

Given at the Consulate of the United States in the Port of Acapulco Republic of Mexico on this the 18th day of July A D. 1857.

SEAL. In testimony whereof I have hereunto set my hand and affixed the seal of this consulate.

CHARLES L. DENMAN,
U. S. Consul.

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EXHIBIT "J. P. No. 5."

Carlos Horn 1er Teniente de la Armada Nacl. y Capitan de este Puerto.

Seal.

CERTIFICO: que segun acreditan las constancias existenses en el archivo de esta Capitania de Puerto, la Barca Canaca "D. Quijote," su Capitan John Paty fondeo en esta Rada de S. Blás el dio trese de Abril de mil ochocientos cuarenta y seis, prosedente del Puerto de Monterey de la Alta California.

Y para los usos que convenga doy el presente bajo mi firma y sello de oficio, en el Citado Puerto de San Blás, á cuatro de Julio de mil ochocientos cincuenta y siete.

CARLOS HORN.

Seal.

Ygnacio Echagaray Coronel de ejército, Gefe Politico y Comandante prāl de este Canton: CERTIFICO: que la firma que antesede es la misma que usa en todos sus asuntos particulares y publicos el C· Carlos Horn, Capitan de Puerto en San Blas y comandante Militar de dha. plaza, por lo mismo puede dareele entera fé y crédito. Y para los usos á que haya lugar estendí el presente con mi sello y firma á los dies y ocho dias del mes de Julio de mil ochocientos cincuenta y siete.

Y. ECHAGARAY.

DEPOSITION OF JAMES ALEXANDER FORBES.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
ANDRES CASTILLERO.

SAN FRANCISCO, Dec. 14th, 1857.

On this day, before the District Court of the United States for the Northern District of California, came James Alexander Forbes, a witness produced on behalf of the United States in Case No. 420, being

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an appeal from the Board of Commissioners to ascertain and settle the private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT: Ogden Hoffman, District Judge, and counsel for United States and for claimants.

QUESTION BY UNITED STATES ATTORNEY.

My name is James Alexander Forbes; my age is 52; am a native of Scotland; have resided in California 28 years.

Question.—Have you held any public employment during the existence of the Mexican Government, and if so, what?

Answer.—I was British Vice Consul eight years, from 1843 to 1851.

Ques.—During that time was there a British Consul at Tepic, and who was he?

Ans.—There were two persons exercising the functions of British Consul at Tepic during that time; one was Mr. Eustace Barron and the other Mr. Alexander Forbes. I do not recollect precisely during what years they respectively held office. I believe that Mr. Eustace Barron exercised those functions from 1843 to 1847 or 1848. Mr. Alexander Forbes succeeded him I think about 1847 or 1848. He held office I think until 1850, when he was succeeded by Mr. Eustace W. Barron, son of the former.

Ques.—Were these three gentlemen all of the house of Barron, Forbes & Co., during this time?

Ans.—I cannot state at what time Mr. Eustace W. Barron became a member of the firm of Barron, Forbes & Co., nor can I state of my own knowledge that Mr. Alexander Forbes was a member of that firm.

Ques.—Who was Mr. William Forbes?

Ans.—He was a member of the firm, and the one whom I knew there as the prominent active partner in the house.

Ques.—Did you ever have a personal acquaintance with Mr. Alexander Forbes; if so, where and when?

I did; in California, in 1848.

Ques.—When did he arrive in California?

Ans.—I am not certain as to the precise date. It was the latter part of 1847 I think.

Ques.—Can you not recall the month?

Ans.—As my recollection serves it was in the latter part of the year. I cannot state the precise time.

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Ques.—After you saw Mr. Alexander Forbes in California in 1847–'8, did you see him elsewhere?

Ans.—I saw him in the city of Tepic, in Mexico, in May, 1849.

Ques.—When you saw him in Tepic did he appoint you his agent for any purpose; if yea, for what purpose?

Ans.—He did. He appointed me to take charge of the mine of New Almaden.

Ques.—Did he confer that authority by writing?

Ans.—He did. I received a written power of Attorney. That document is in my possession. I believe it is on record in Santa Clara County, but I am not certain; at all events I have the paper.

Ques.—Have you got it here in Court?

Ans.—I have not. It is in my house in Santa Clara.

Ques.—How long did you remain in Tepic on the occasion of which you have spoken, and when did you arrive in California?

Ans.—As far as my recollection serves me, I left California about May 1st, 1849, and I arrived in San Francisco about June 13th of the same year, but I am not positive.

Ques.—Will you endeavor to remember at what time you left Tepic?

Ans.—I have said that I arrived in San Francisco about the 13th June. I came in a steamer, and I must have been some nine or ten days on the voyage.

Ques.—When you arrived in California did you do anything in pursuance of the authority you had received from Alexander Forbes?

Ans.—Not immediately. In pursuance of that power of Attorney, I took charge of the mine of New Almaden.

Ques.—How long did you hold charge of the mine, and in what capacity did you hold it?

Ans.—I had charge of the mine and Hacienda from October 1849, to May 1850. I held it as Director.

Ques.—What was the nature of your duties?

Ans.—The general supervision of the affairs of the mine.

Ques.—What duties did you perform while holding charge of the mine?

Ans.—Those that I have expressed in my previous answer. The supervision of the mine included the payment of laborers and the direction of their operations.

Ques.—At that time did you own an interest in the mine?

Ans.—I did.

Ques.—Did you make reports of what you did in the course of your duties. If so; to whom and how—whether orally or in writing?

Ans.—I made written reports to Barron, Forbes & Co., as the Directors general of the mine, of the disbursements made by me. They were generally sent by steamer.

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Ques.—In the year 1849 did the mail steamers stop at any Mexican ports; if so, at what ports and how often did they run?

Ans.—The mail steamers sailed from here monthly, and generally stopped at Mazatlan and San Blas.

Ques.—Did you write by every steamer to the persons you have mentioned?

Ans.—I did generally.

Ques.—Was it your custom to write a single letter or many letters of different dates by each steamer?

Ans.—My correspondence with those gentlemen was voluminous and required several days to prepare it. I dated my letters from day to day as I prepared them.

Ques.—Are you acquainted with the firm signature of Barron, Forbes & Co., and with the handwriting of either of the partners or of their clerks at the time you have spoken of?

Ans.—I am acquainted with the handwriting of Mr. Alexander Forbes, Mr. Eustace Barron, and Mr. Eustace W. Barron.

Ques.—How did you acquire your knowledge of their handwriting?

Ans.—I have received letters from them all. Have seen them all write except the elder Mr. Barron.

(Paper produced marked "F. No. 20, J. A. Monroe.")

Ques.—Look at this paper and say if you know the handwriting?

Ans.—The body is in the handwriting of Mr. W. E. Barron, the gentleman now in court, the signature is that of Mr. William Forbes.

(Paper offered in evidence—counsel for claimants objects to the letter as an admission on the ground that there are other parties in interest as appears by the record who are tenants in common, and whose interests will be affected thereby.

Also, that it does not appear by whom it was received or where it came from.)

Ques.—Are you the person to whom this letter was addressed; was it received by you; when and where?

Ans.—I am the person: I received it at the mine New Almaden; it was transmitted to me by my agent in San Francisco; it was received 15 or 20 days after its date.

(Paper offered in evidence. Received and read subject to objection, and attached to deposition, marked "O. H. No. 1.")

(The witness desires to state that he was in error as to the date and

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place of the reception of the above letter. He now states that he received it in Tepic, and that he remembers the fact from hearing the contents read which he had not previously adverted to.)

Ques.—What were the circumstances you had communicated to Barron, Forbes & Co., and what were the lands alluded to in that letter?

(Question objected to.)

Ans.—As far as I recollect I considered it necessary to obtain an extension for the purpose of procuring wood, and I recommended the purchase of a part of the rancho of San Vicente. I was thereupon authorized to do so by those gentlemen.

Ques.—What part of the rancho were you to purchase, and from whom?

Ans.—The south-western part. I was to purchase it from the family of the deceased José Reyes Berreyesa.

Ques.—Please to explain what you mean by an "extension" of land in your previous answer. What was to be embraced within that extension?

Ans.—I meant an extension of facilities for the purpose of obtaining wood. The land referred to was all the land on the western side of the creek of Alamitos to which the Berreyesa's laid claim.

The overtures made by me did not express any definite quantity of land. I was desirous to purchase their right, if they had any right.

Ques.—What are the relative positions of the mine and hacienda, and the lands to which you refer?

Ans.—The principal part of the land lay to the north-east of the mine and Hacienda. The latter are on the same side of the creek.

Ques.—How would the remainder lie?

Ans.—It would be impossible for me to state how far the claims of the Berreyesa's reached. I was desirous of purchasing all the lands claimed by them on the western side of the creek.

Ques.—Look at the paper now shown you marked 4 F. No. 21, "J. A. Monroe," and say in whose handwriting the body of that paper in the Spanish is, and also the endorsement in English.

Ans.—This document is in my own handwriting, also the endorsement.

(Paper offered in evidence. Objected.)

Ques.—Were the words of the endorsement written by you at the time of their date?

Ans.—They were.

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Ques.—Did you or did you not leave with Alexander Forbes the memorandum, as stated by that endorsement?

Ans.—I did.

(Paper read in evidence, subject to exception. Marked "O. H. No. 2," and attached to deposition.)

Ques.—Look at paper now shown you marked "F. No. 23, J. A. Monroe," and say in whose handwriting it is.

Ans.—The body of the writing and the signature are in my handwriting; also the endorsement.

Ques.—Was that endorsement put on at its date?

Ans.—I presume it was.

Ques.—Is that endorsement true?

Ans.—I did send a letter of which that is a copy to Mr. William Forbes at the date mentioned in the copy.

(Paper offered in evidence. Objected to. Received in evidence subject to objections, and attached to deposition and marked "O. H. No. 3."

Ques.—Please look at paper marked "F. No. 23, J. A. Monroe," and state in whose handwriting are the body, the signature and the endorsement.

Ans.—The body of the letter and the signature are in my handwriting; also the endorsement, except the lower part, (that of the Clerk of this Court.

Ques.—Is the fact stated in the endorsement true? Is this a copy of a letter to Alexander Forbes, written at the date it purports to bear and sent to him?

Ans.—Yes sir.

Ques.—Look at the date of the endorsement and that of the body of the letter and state how you account for the difference between them?

Ans.—I presume it is a clerical mistake. I was in the habit of writing numerous letters about the latter part of the month, and may have made a mistake in the date.

(Paper offered in evidence. Objected to. Received subject to objection. Attached to deposition and marked "O. H. No. 4.")

Ques.—Look at the letter marked "F. No. 16, J. A. Monroe," and say in whose handwriting are the body, the signatures and the endorsement?

Ans.—The body of the letter is in the handwriting of Mr. William

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E. Barron; the signature is that of Mr. Alexander Forbes, and the endorsement is in my handwriting.

Ques.—Are you the James A. Forbes to whom it was addressed; was it received by you and when?

Ans.—I am the person to whom it was addressed. It was received by me probably a month after its date. I cannot precisely state.

(Paper offered in evidence. Objected to. Read subject to exception and attached to deposition, marked "O. H. No. 5."

Ques.—Did you receive the notarial copy of the grant to Andres Castillero mentioned in this letter.

Ans.—I did.

Ques.—What did you do with it?

Ans.—I gave it to Don Isadoro de la Torre on the 18th June, 1850.

Ques.—What Mr. de la Torre is this of whom you speak? Had he any connection with this mine; if so, what?

Ans.—I speak of Don Isadoro de la Torre, member of the firm of Jecke, Torre & Co. He had an interest at that time in the mine and in the contract for working it. He succeeded me as superintendent of the mine.

Ques. —Where was he then?

Ans.—I transmitted it with other documents to him when he was at the mine of New Almaden, and I was at my residence in Santa Clara.

Ques.—By whom did you transmit it?

Ans.—I am not certain whether by the hands of Mr. Robert Birnie or some other person in the service of the mine. I know he received the documents.

Ques.—Are you acquainted with the signature and handwriting of the Mr. Alexander Forbes of whom you have spoken? If so, what are your means of knowledge?

Ans.—I have had voluminous correspondence with him, and have oftentimes seen him write.

Ques.—Look at the paper marked "F. No. 7, J. A. Monroe," now shown you, and say in whose handwriting it is.

Ans.—The body and the signature are in the handwriting of Alexander Forbes.

Ques.—Are you the James A. Forbes to whom it is addressed?

Ans.—I am.

Ques.—At or about what time did you receive it?

Ans.—I cannot state positively, probably about the latter part of December, 1849, a month or so after its date.

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(Paper offered in evidence. Objected to. Received subject to objection. Attached to deposition and marked "O. H. No. 6.")

Ques.—Look at the paper marked "F. No. 9, J. A. Monroe," now shown you, and state in whose handwriting it is, and whether you are the person to whom it is addressed, and whether you received it; if so, when?

Ans.—The body and signature are in the handwriting of Mr. Alexander Forbes. I am the person to whom it is addressed. I received it a short time after its date. I can't say when.

(Paper offered in evidence. Objected to. Read subject to objection. Attached to deposition and marked "O. H. No. 7.")

Ques.—Did you receive the document of which that letter speaks, being the grant to Andres Castillero?

Ans.—I don't recollect having received any other document than that to which I have already testified.

Ques.—Did you ask Probst, Smith & Co., for the document alluded to?

Ans.—I can't exactly state. I don't recollect whether I did or not. They were my agents in San Francisco. They received my correspondence and transmitted it to me.

I do not know whether the document I received from them and gave to Don Isodoro de la Torre was the notarial copy alluded to in a former letter, or that alluded to in the last letter.

Ques.—Can you state anything more with reference to the document spoken of in this last letter?

Ans.—No, sir.

Ques.—Look at the paper now shown you, marked "F. No. 10, J. A. Monroe," and state in whose handwriting it is; whether you are the person to whom it is addressed; whether you received it, and when.

Ans.—The body and signature are in the handwriting of Mr. Alexander Forbes. I am the person to whom it is addressed. I received it in the usual course of steamer after its date.

(Paper offered in evidence objected to. Received subject to objection, and attached to deposition, and marked "O. H. No. 8."

Ques.—Look at the paper marked "F. No. 11, J. A. Monroe," and say in whose handwriting it is; whether you are the person to whom it is addressed; whether you received it, and when.

Ans.—My answer is the same as that to the last question.

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(Paper offered in evidence. Objected to. Read subject to exception, attached to deposition, and marked "O. H. No. 8½.")

Ques.—Will you be kind enough to explain what Mr. Forbes refers to in speaking of information acquired by "us," with regard to the title of José Reyes Berreyesa?

Ans.—He refers to the existence of an erasure in one of their titles.

Ques.—In what manner did you and Mr. Alexander Forbes obtain your knowledge of this fact?

Ans.—We saw it.

Ques.—When, how, and under what circumstances?

Ans.—We saw that paper at the house of the Berreyesa's.

Ques.—What was your object in looking into their titles?

Ans.—The object was to run certain lines between the mining lands and those of the Berreyesa's. Mr. Alexander Forbes desired to see their titles. They were shown to him and me.

Ques.—Why did he desire to see the papers?

Ans.—To enable him to run a line between his lands and those of the Berreyesa's.

Ques.—Was there a survey made?

Ans.—There was, by one Chester S. Lyman.

Ques—.What was the date of that survey?

Ans.—I think in January and February, 1848.

Ques.—What lands were surveyed?

Ans.—A tract southwest of the Rancho of San Vicente, embracing two leagues around the mine.

Ques.—Under what title or grant, if any, was that survey made?

Ans.—I am not able to state.

Ques.—Was you not present at any time while this survey was being made, and did you see Mr. Alexander Forbes there at any time?

Ans.—I was present, and I saw Mr. Alexander Forbes there.

Ques.—Did you then see any grant of the two leagues then being surveyed?

Ans.—I did not.

Ques.—Had you ever seen any such grant?

Ans.—I had not.

Ques.—What lands then were to be separated from those of Berreyesa.

Ans.—Those I have already mentioned; two leagues of *ganado mayor* around the mining possession.

Ques.—Under what title, or by what right, as explained to you at that time, were those two leagues to be surveyed?

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Ans.—The order for the survey was made by Mr. Alexander Forbes.

Ques.—Did he speak of no right or title under which he ordered that survey to be made?

Ans.—I can't exactly remember all that occurred in conversation. My impression is, that he said he had a title for the two leagues, or that there was one appertaining to Castillero. I am uncertain whether he said he had it or had it not. He never showed it to me.. My recollection of the conversation is, that Mr. Forbes stated that Castillero had relinquished his claim to $25,000 from the Mexican government, and had solicited in place of it a grant for the two *sitios*. I desire to state that I never saw any grant of the land at that time.

Ques.—From what passed at that time, was the impression made upon your mind that Mr. Alexander Forbes spoke of a title then in existence, or one thereafter to be procured?

Ans.—My impression was that he spoke of it as already existing.

Ques.—When did you become satisfied that the title did not exist, and that it was necessary to procure one as stated in your memorandum at Tepic?

(Question objected to and withdrawn.)

Ques.—When did you become satisfied that it was necessary to procure the grant described in the memorandum left by you with Mr. Forbes at Tepic, and dated May 27, 1849?

Ans.—I did not exactly become satisfied that it was necessary to procure that grant.

Ques.—Can you not answer further to that question?

Ans.—It was merely suggested. I don't know that I ought to answer. I will state, however, that from the time Mr. Alexander Forbes was in California I was apprehensive that there was something wrong about the title to the mine, in consequence of the second possession given by the Alcalde of San José in 1848. As regards any measures that may have been carried out at my suggestion, I am innorant of them; that is, I am ignorant whether any such measures were carried out or not.

Ques.—Look at the paper now shown you marked "F. No. 24, J. A. Monroe," and state in whose handwriting it is; also, at the memorandum on the back, and say in whose handwriting it is.

Ans.—The body, signature and endorsement are in my handwriting. It is a copy of a letter sent by me at the date it purports to bear, to Alexander Forbes.

(Letter offered in evidence. Objected to. Received subject to objection. Attached to deposition, and marked "O. H. No. 9."

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Ques.—Look at the paper now shown you, marked "F. No. 12, J. A. Monroe;" say in whose handwriting it is; whether you are the person to whom it is addressed, and when you received it.

Ans.—This is a press copy of a letter addressed to me by Barron, Forbes & Co.; the handwriting of the body I do not know; the signature is that of Mr. Wm. Forbes. It was received by me in due course of mail.

(Letter offered in evidence. Objected to. Received subject to exception; attached to deposition, and marked "O. H. No. 10."

Ques.—Look at the letter marked "F. No. 14, J. A. Monroe," and state in whose handwriting it is; whether received by you, and when.

Ans.—The body and signature is in the handwriting of Mr. Alexander Forbes. I am certain from the reference made to the cylinders that it must have been sent to me in 1850.

(Paper offered in evidence. Objected to. Received subject to objection; attached to deposition, and marked "O. H. No. 11.")

Ques.—Look at the four papers shown you, and marked "F. No. 13, J. A. Monroe;" "F. No. 15, J. A. Monroe;" "F. No. 17, J. A. Monroe," and "F. No. 15½, J. A. Monroe," and state in whose handwriting they are, and when received.

Ans.—"F. No. 15½" is a press copy of the letter signed by me, and addressed to Alexander Forbes, and transmitted at the time of its date. The rest are all in the handwriting of Mr. Alexander Forbes, and received by me in due course of steamer.

(Papers offered in evidence. Objected to. Received subject to objection; attached to deposition and marked "O. H. No. 12," "O. H. No. 13," "O. H. No. 14," "O. H. No. 15."

Ques.—Look at the papers marked "F. No. 1, J. A. Monroe," "F. No 2," J. A. Monroe," "F. No. 3, J. A. Monroe," "F. No. 4, J. A. Monroe," now shown you, and say in whose handwriting they are, and whether received by you and when.

Ans.—They are all in the handwriting of and signed by Alexander Forbes. They were transmitted so me from their respective places of date, and received by me, not by steamer, but by other conveyances: sailing vessels, &c.

Ques.—Look at the papers now shown you, marked "F. No. 6, J. A. Monroe," and state in whose handwriting it is, and whether received by you, and when. Also, at "F. No. 5, J. A. Monroe;"

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also, at "F. No. 19, J. A. Monroe;" also, "F. No. 8, J. A. Monroe."

Ans.—"F. No. 6," "F. No. 5," and "F. No. 19," are in the handwriting of and signed by Mr. Alexander Forbes. Also, "F. No. 8, J. A. Monroe." They were received by me by a special messenger from the mine of New Almaden, except one, which was received by a messenger from Monterey.

Ques.—Look at the paper marked "F. No. 19, J. A. Monroe," and answer the same questions with regard to it.

Ans.—"F. No. 19" is in the handwriting and signed by Alexander Forbes. It was received by me by a special messenger from the mine.

Ques.—Look at "F. No. 25, J. A. Monroe," "F. No. 26, J. A. Monroe," and "F. No. 27, J. A. Monroe," and answer the same questions with regard to them.

Ans.—"F. No. 25" is in the Spanish language; it is in my handwriting. It is a copy of a petition presented by Alexander Forbes to the Alcalde of San José, at the time it bears date, Jan'y, 1848. "F. No. 26," is a sketch explanatory of it, also in my handwriting. The drawing is by me. "F. No. 27," is a list, in my handwriting, of the documents to which I have been testifying.

(All the above documents were offered in evidence, and objected to. Received subject to exception, attached to deposition, and marked "O. H. No. 16," "O. H. No. 17," "O. H. No. 18," "O. H. No. 19," "O. H. No. 20," O. H. No. 21," "O. H. No. 22," "O. H. No. 23," "O. H. No. 24," "O. H. No. 25," O. H. No. 26."

Ques.—Look at paper marked "F. No. 18, J. A. Monroe," and state by whom it was written, and when received.

Ans.—It is in the handwriting of Mr. Wm. E. Barron; the signature is that of the firm, written by Mr. William Forbes. It was received by me in due course of mail.

(Offered in evidence. Objected to, and received subject to exception. Attached to deposition marked "O. H. No. 27.")

JAS. ALEX. FORBES.

Sworn to and subscribed before me, this 14th day of December, 1857.

OGDEN HOFFMAN.

Examination adjourned until Tuesday, Dec. 15th, at 11, A. M.

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U. S. STATES DISTRICT COURT.

IN OPEN COURT.

TUESDAY, December 15th, 1857.

PRESENT:—Ogden Hoffman; the District Attorney and Mr. Randolph for the U. S.; Mr. Peachy for Claimant.

EXAMINATION OF JAMES ALEXANDER FORBES RESUMED.

Certified copy of Power of Attorney to James Alexander Forbes offered in evidence.

(Objected to. Objection sustained; but the Court allows the said copy to be used for the purposes of this examination, with the understanding and on condition that the original will be produced and duly proved at a subsequent day, and if the same is not so produced, then the said certified copy and all questions relating thereto, are received subject to all legal exceptions as to the admissability or effect thereof. Marked "O. H. No. 29," and attached to deposition of James Alexander Forbes.)

EXAMINATION RESUMED.

Ques.—Look at the paper now shown you, marked "H. L. No. 6," filed August 20, 1857, in this case, purporting to be a copy of power of attorney to you from Alexander Forbes, certified to be of record in Recorder's office of Santa Clara county, and say whether that is a true copy of a power of attorney received by you from him at Tepic.

Ans.—I believe it is substantially correct.

Qus.—Did you cause that power of attorney to be recorded at the Recorder's office of Santa Clara?

Ans.—I think I did.

Ques.—Is the original the power of attorney under which you took charge of the mine of New Almaden?

Ans.—It is.

Ques.—You yesterday testified that certain papers were in the handwriting of Mr. Wm. E. Barron; what are your means of knowing his handwriting?

Ans.—I have had correspondence with him and seen him write.

Ques.—When did you first receive possession of the Mine of New Almaden, and from whom?

Ans.—I received possession of the mine in 1846, from the representative of Castillero.

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Ques.—What was his name?

Ans.—Jose Maria Real, usually known as Padre Real, of the Mission of Santa Clara.

Ques.—Of what did he give you the possession?

Ans.—Of the mine itself, the hacienda, the mining utensils and the ores that had been extracted from the mine.

Ques.—What do you mean by the mine? Do you mean the spot only where the ores were dug, or that spot with a definite extent of land about it; and if the latter, of what definite extent of land around the mine did he give you possession?

Ans.—I not recollect that any definite extent was specified other than that given by the Alcalde. It was understood that the mine contained three pertenencias at that time.

(The latter part of this answer objected to.)

Ques.—By "pertenencias" do you mean the quantity of land known as such in the mining ordinances of Mexico?

Ans.—I do.

Ques.—Was Padre Real at that time interested in the Mine of New Almaden, as well as the representative of Andres Castillero?

Ans.—He was.

Ques.—Did he assign any reason for wishing you to take possession at that time? Were you an owner in the mine?

Ans.—He was desirous that the mine should be continued to be wrought, and I was negotiating at that time for the purchase of an interest in the mine.

Ques.—Did he assign any reason for selecting you as a proper person to take charge of the mine at that time?

Ans.—I don't recollect that he did, other than that we were upon friendly terms.

Ques.—Was it not understood that there were special reasons why you should be the person to have charge of the mine?

Ans.—I think Padre Real manifested a desire not to be in charge of the mine owing to his clerical character, and the difficulties which were about taking place in the country.

Ques.—Do you mean the conquest by the Americans?

Ans.—I do.

Ques.—Describe, if you please, in what condition you found the mine when you took possession. Was it then being wrought; if yea, by how many laborers?

Ans.—The aperture of the mine was an adit or horizontal entrance. The pit of possession or "poso de posesion," was filled with débris of the upper part called "tepetate." The adit was about 20 or 25 feet in length through the rock. The ores were in sight on either side. There was a planila or little plateau on the outside formed of the ma-

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terial taken from the mine. There was one Mayordomo in charge, one blacksmith, and two or three Indians. The Mayor domo and blacksmith resided at the hacienda. One of the Indians remained constantly at the mine and slept in it. They were not at that time actively engaged in extracting the ores.

(The witness desires to add to his former answer, that he received about 2,000 pounds of quicksilver at the time he received possession of the mine.)

Ques. Where did the other Indians stay?

Ans. I don't know. They wandered about there, and down to the Mission of Santa Clara.

Ques. Had you visited the mine at any time during the preceding one, two, three or four months; if yea, had you found laborers engaged in working the mine—if so, at what time and how many?

Ans. I had visited the mine about one month previous. The Mayordomo was there; some three or four Indians were at work inside the mine extracting ores. I had not been there before that time.

Ques. Had you no information or knowledge as to whether the mine was being worked two, three, or four months previously?

Ans. Not of my own knowledge; but it is certain that it had been wrought, for the quicksilver which I received had been extracted.

Ques. Do you mean to say that is certain that the mine had been wrought, and that quicksilver had been extracted within four months next preceding the time when you took possession?

Ans. I cannot state at what time that quicksilver was extracted. I hare already said I could not state from my own knowledge at what time the mine was being wrought.

Ques. Did you not learn from Padre Real at what time that quicksilver had been extracted?

Ans. I do not recollect that I did.

Ques. How long did you hold possession of the mine, and to whom did you surrender it.

Ans. I can't exactly state. Sometime in 1847 I delivered it to Mr. Robert Walkinshaw, agent of Mr. Alexander Forbes.

Ques. Did Padre Real deliver to you the possession of the hacienda; did he give you therewith the possession of any definite extent of land about it, and how far is it from the mine?

Ans. When he gave me possession of the mine, the hacienda was comprised in it. It is situated about a mile from the mine.

Ques. Do you know of any mode of measuring three pertenencias about that mine so as to include the hacienda?

Ans. No, sir.

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Ques. Will you answer yes or no, whether he gave you possession of a definite tract of land about the hacienda?

Ans. There was no definite tract of land stated. The possession of the hacienda was comprised in that of the mine.

Ques. When you delivered possession of this mine and hacienda to Robert Walkinshaw, agent of Alexander Forbes, of what did that possession consist? Did you deliver possession of any tract around the mine and hacienda, or either of them?

Ans. I delivered to him that possession which I had received, together with a considerable quantity of ore which I had extracted. At the hacienda I delivered what I had received, together with some utensils purchased by me. I did not deliver to him possession of any definite tract about the mine or hacienda.

Ques. When you recovered possession of the mine and hacienda on your return from Tepic, of what did you regain possession?

Ans. I did not state that I recovered possession on my return from Tepic; I said I received it by virtue of a power of attorney.

Ques. Of what did you receive possession on your return from Tepic?

Ans. I received possession of the mine, a large quantity of cinnabar ore, and of the hancienda, comprising all the works erected by Mr. Walkinshaw.

Ques. Did you receive possession of any definite tract of land about the mine or hacienda at that time?

Ans. I do not recollect that I did.

Ques. Look at this letter marked "F. No. 6, J. A. Monroe," and tell me what assays are spoken of in that letter?

Ans. As far as my recollection serves these were assays made at an adit vein by Mr. Alexander Forbes at a place not in the true course of the vein. It was afterwards called "*capricio*."

Ques. Was that assay made by yourself; if so, what was the yield there spoken as "surprising?"

Ans. I made several assays of the ores from New Almaden and San Antonio. They were made with a gun barrel. Probably the surprise expressed was at finding those ores as good as the others, which was not expected. I ought to add that it was Mr. Forbes' policy to make it appear that there was no large deposit of quicksilver there, as is usual throughout the mining dirtricts of Mexico. I mean that it was his policy at that particular time. The assays were made with a large gun barrel with the muzzle inserted in water.

Ques. What was the largest per centage of quicksilver you remember to have obtained with your gun barrel from the ores of New Almaden?

Ans. As far as my recollection serves, at that time about 26 per cent.

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Ques. Did you afterwards obtain a greater yield; if so, when and how much?

Ans. I did. In the progress of the operations rich ores were discovered, of which I have made assays which produced over 40 per cent. It is to be understood that an assay made in the manner I have stated is not subject to the same loss as attends the reduction of ores on a larger scale, owing to the evaporation.

Ques. Did you make an average of the yield of the best ores; if so, what was it?

Ans. I did not make any continuous series of assays. I did not make any average of the best assays.

Ques. When you took possession of the mine what constructions had been made for reducing the ores?

Ans. The operations had been conducted on a small scale up to that time. The ores had been confined in two iron pots, the one inverted over the other with an aperture for the escape of the vapor of mercury which was condensed.

Ques. At what time were furnaces for the reduction of ores first erected?

Ans. I erected furnaces at the hacienda in the winter of 1850. They contained iron retorts.

Ques. How many were there?

Ans. There had been some furnaces containing these iron pots erected in 1846. The pots were replaced from time to time as they were decomposed by the action of the sulphur. The brick furnaces at present in use were erected in 1850. The mayordomo erected the furnaces with iron pots. I can't say whether the mayordomo or Castillero erected them. They consisted of two arches, one above the other. The lower received the ashes, the upper the wood. On the upper the pots were placed, the lower received the ore; the upper was inverted over it with a luting at the joint, but with an orifice for the escape and condensation of the vapor. They were built of adobe or sun driedbricks. Mr. Forbes, in 1848, erected similar furnaces but a little larger.

Those I erected in 1850 were similar. They contained each two iron retorts, having doors on the one side and apertures on the other, connected with iron condensers. I erected two of these in 1850.

They were much larger than the previous ones. Each retort was charged with four hundred pounds of ore.

Ques. What was the *expediente* referred to in the first paragraph of the letter just shown you?

Ans. As far as my recollection serves me, it alludes to a copy of the Berreyesa title which had been procured from Monterey.

Ques. Who had procured it, and for what purpose?

Ans. I procured it to ascertain the extent of land comprised in their grant.

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Ques. At what time did you purchase an interest in the Almaden mine, and from whom?

Ans. About the time I took charge in 1846 I purchased from José Teodoro Robles and Secundino Robles, partners of Andres Castillero in the mine. The deed was not put on record until some time afterwards; in fact, it was not made out. In reality the purchase was made at that time.

Ques. Where is the deed?

Ans. I do not know. It is on record in Santa Clara county.

Ques. Where is the original? Can't you recollect whether you delivered it to your vendees or not?

(A deed from Don Secundino Robles and Don Teodoro Robles to James Alexander Forbes produced. Admitted to be the original deed in handwriting of witness. Certified copy filed in lieu of the original by consent of both parties. Copy marked "O. H. No. 28," and attached to deposition.)

Ques. At the time you made this purchase did you ask of the Messrs. Robles or Padre Real to see the title under which they held this property?

Ans. They exhibited to me a copy of the contract with the Company for the working of the mine, which I retained. I don't recollect that any other document was shown me. I asked them for their evidences of title.

Ques. Do you mean the contract between Andres Castillero, Gen. Castro, the two Robles and Father Real, made in 1845?

Ans. I do. I think it was made in November, 1845.

Ques. Did they exhibit to you any other title or writing whatever?

Ans. I do not recollect that they did.

Ques. Did you at that time see, or had you at any time previously seen, any concession by any Alcalde of 3000 varas in all directions from the mine, or any grant of two sitios of "ganado mayor."

Ans. I had not.

Ques. Had you seen any such papers at the time you took your deed in 1847?

Ans. I had not seen any grant of the two sitios. As to the concession of 3000 varas, I am uncertain. I should not like to state whether I had or had not. I saw it subsequently.

Ques, Do you mean to say that at the time you took a deed of two barras in three pertenencias, so carefully drawn, that you are not certain whether you had or had not seen a concession of 3000 varas in all directions to your grantors and their associates, or to the persons from whom they derived title, and which concession, if calculated as a

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circle, will give more than 700 pertenencias of the largest class, and if calculated as a square will give just 900 of said pertenencias?

Ans. I mean to say that in that transaction I was guided by the contract of company of Castillero and his associates, and by the notorious fact of his having received a possession. I made out the deed according to the usual formula of Mexican documents. With regard to the pertenencias, the gentleman is mistaken, unless the extent be calculated from the mouth of the mine as a centre. I do mean to state that I am uncertain whether or not I saw at that time the concession alluded to.

Ques. Look at the paper now shown you, marked "Año de 1845. "Espediente del denuncio posesion y compañia de la mina de Azogue "nombrada Santa Clara jurisdiccion de San José Guadalupe en la Alta "California," being the original of Exhibit "A," to Claimant's petition in this cause, and of which a certified traced copy is on file in this cause—except that part following the signature of James W. Weekes, Alcalde; say in whose handwriting is the body and the certificate next immediately following the signature of James W. Weekes, signed James Alexander Forbes, and in whose handwriting is the endorsement in Spanish already read to you.

Ans. The body of the instrument is in my handwriting; the certificate of Weekes is in my handwriting; the signature is his. The certificate signed by me is in my handwriting, and the signature is mine. The endorsement or superscription on the first leaf in Spanish is in my handwriting.

Ques. At what time did you write this; was it at the date of the certificate?

Ans. I made that copy in January, 1848, I presume on the same day it is dated.

Ques. Where were you when you made it?

Ans. I cannot state positively, but it strikes me I was at the mine of Almaden.

Ques. Where did you get the originals from which it was made?

Ans. I got them from Alexander Forbes to the best of my recollection. He handed them to me and requested me to make a copy. He procured them, I believe, from the Alcalde.

Ques. What did you do with the originals after you had made the copy?

Ans. I can't say whether I handed them to Mr. Forbes or the Alcalde. He was at the mine at the time; his name was James W. Weekes.

Ques. Did you give them to either?

Ans. Yes; I handed them to one or the other of those persons.

Ques. Had you ever seen the papers from which the copy was made before that time?

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Ans. According to the best of my recollection I had not.

Ques. Did you ever see them after that time?

Ans. I think I did.

Ques. When and where?

Ans. I sought for them in the office of the County Recorder of Santa Clara, I think in 1853, and I found an espediente which I presumed was the same.

Ques. Do you mean to say that this paper shown you was copied from the paper you found in the Recorder's office in 1853?

Ans. I am unable to state without a comparison.

Ques. Where did you obtain these words, (the superscription in Spanish)?

Ans. I presume it is a copy of the original.

Ques. Where did you get the words on the first page, "Es copia a la que me remito firmandola con dos testigos de asistencia en el Pueblo de San José de Guadalupe a 13 de Enero de 1846. Pedro Chabolla, de asistencia P. Sainsevain de assis^{tncia}. José Suñol?"

Ans. I do not know. I have already said I copied the paper handed to me. I presume from seeing them in the copy that they were in the original.

Ques. Look at the same words signed to the second petition, and say where you got them?

Ans. I make the same answer as that to the last question.

Ques. Look at the receipt for $25, signed Antonio Maria Pico, and say where you got those words.

Ans. I make the same answer as before.

Ques. Look at the last instrument, purporting to be a copy of articles of partnership between Castillero, Robles &c., and say where you got the original of that particular paper.

Ans. As far as my recollection goes, it must have been handed to me with the other documents by Mr. Alexander Forbes, or the Alcalde.

Ques. Do you mean to say that each and every of the writings as to which I have just interrogated you, constituted a part of the original expediente of the mine, copied by you and certified to by Weekes?

Ans. My answer is that those copies were made by me from documents presented to me as before stated.

Ques. When you made this copy at the mine who else was present?

Ans. I have not positively said that it was made at the mine. If it was, Mr. Walkinshaw was present, besides Mr. Alexander Forbes.

Ques. Was not Antonio Maria Pico there?

Ans. I cannot state positively whether he was there on that day.

Ques. Was he not there on the 19th, 20th or 21st of January of that year?

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Ans. He was there with the Alcalde Weekes, but I am not certain on what day.

Ques. Was it not when the Alcalde Weeks was there, and on the occasion when he gave possession of four pertenencias that he signed the certificates just shown you?

Ans. I cannot state positively whether Weekes signed the certificate on that occasion, or at his office.

Ques. Was not the possession given and the certificate signed on or about the same day?

Ans. I think it was; but I am uncertain whether it was signed at the mine or his own office. I am certain I certified to it at my own residence.

Ques. Look at the paper marked by the Court "O. H. No. 24," and say whether this is the petition on which the Alcalde Weeks gave the possession of the pertenencias on or about the same day as you have testified that he signed the certificate to the copy of the expediente.

Ans. I think this document is a copy of the petition presented to the Alcalde on that occasion, but am not able to swear that it is.

Ques. Will you now explain what you meant in that petition by what is said about the increase of pertenencias and the correction of boundaries?

(Objected to; taken subject to objection.)

Ans. I am unable to state. I made out this document at the command or by the direction of another party.

Ques. Who was that other party?

Ans. Mr. Alexander Forbes.

Ques. Who asked you to make the copy of the Espediente—the Alcalde or Mr. Forbes?

Ans. Mr. Alexander Forbes.

JAS. ALEX. FORBES.

Subscribed before me this 15 Dec., 1857.

OGDEN HOFFMAN,
Dist. Judge.

Examination adjourned until Wednesday, Dec. 16, at 11 A. M.

UNITED STATES DISTRICT COURT.

PRESENT: Ogden Hoffman, Judge; counsel for the United States and for Claimants.

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Examination of James Alexander Forbes, resumed.

WEDNESDAY, December 17, 1857.

Question.—When Alexander Forbes arrived in Monterey in 1847, how old was he?

Ans.—I should think about 72 years of age.

Ques.—Look at the paper now shown you, superscribed on 1st leaf "Posesion de la mina de Santa Clara. Ano de 1845," being paper produced by S. O. Houghton, (admitted to be the same found by witness in 1853 in Recorder's Office as testified by him,) and say whether or not this is the paper from which you made the copy endorsed "Espedienté de la Mina" &c., as to which you testified yesterday?

Ans.—I cannot state unless I am allowed to compare them.

(The witness compares the documents.)

I think it is not.

Ques.—If this is not the original from which the copy was made can you now answer whether or not you have ever seen the original since the time you made the copy?

Ans.—I do not recollect that I have.

Ques.—Did you ever see that paper "Posesion de la Mina" &c., at any time before you made that copy?

Ans.—I do not recollect that I did.

Ques.—Did you ever see it any time before you discovered it in the Recorder's office in 1853.

Ans.—I cannot state with certainty whether I did or not.

Ques.—Look at the letter marked "F. No. 24, J. A Monroe, O. H. No. 9," in which you say that Castillero succeeded in obtaining a grant of two sitios on his mining possession. Which of the three mining possessions do you allude to therein; the one for three pertenencias which you have said was understood to exist at the time you bargained with the Robles for the two barras; the one of which you made the copy certified to by Weekes January 20, 1848, being for 3000 varas in all directions from the mine; or that one given by the said Weekes of the same date with the said certificate of Weekes, and which is for four pertenencias?

Ans.—I allude to the posession given to Castillero by the local authorities of San José in 1845. It must have been the one I understood to exist at the time I bargained with the Robles, and which I understood to consist of three pertenencias.

Ques.—Have you ever seen the act of concession of the said three pertenencias?

Ans.—I have not.

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Ques.—Do you know what are the terms of said concession of three pertenencias ?

Ans.—Not having seen it, it is impossible for me to state its terms.

Ques.—Look at the letter marked " O. H. No. 4."

Which of these possessions do you allude to by the terms " precarious and illegal possession of the mine," &c., which of the three possessions just referred to?

Ans.—I allude to the possession of 3000 varas. The terms " precarious and illegal " refer to the mining ordinances which prescribe a quantity less than that, as the extent of a mining possession.

Ques.—Then sir, are you not in error when you said that your allusion in letter " O. H. No. 9," was to the possession of the three pertenencias which you had never seen. Do not both letters allude to the same thing?

Ans.—I think I am not in error; although I said I had not seen that possession, I still alluded to the first, whatever it may have been, and having seen the act of possession in 1848, my observations in the last letter refer to that.

Ques.—Not having seen the concession of three pertenencias which you said was supposed to exist when you bargained with the Robles, and therefore being unable to say in what terms it was expressed, how could you in this letter " O. H. No. 9," have referred to that concession, when you use these words, " that very act of possession declares " that the mine is situated on the lands of one José Reyes Berreyesa, " five leagues distant from Santa Clara."

Ans.—I did not say that I alluded in this letter to an act of possession of three pertenencias. I said I alludcd to the first act of possession given.

(The former answer of the witness is read to him by request of counsel.)

He desires to explain:

With regard to the three pertenencias, I alluded to what was understood to have been given immediately around the mine, which was considered to constitute three pertenencias of the mine but not of the Hacienda or other lands adjacent thereto.

Ques.—I now repeat my question; how is it that never having seen that act of concession, and being therefore ignorant of its terms, you could use the language referred to in letter " O. H. No. 9 ? "

Ans.—If I have inadvertently answered that in that letter I allude to a possession of three pertenencias, I now state that I allude to the act of possession copied by me in 1848.

There was only one act of possession which I understood to have

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been given. This embraced three pertenencias, so far as regarded the mine. Three pertenencias, and also lands about the Hacienda, I understood to have been given to Castillero in 1845.

Ques.—How much land do you mean to say was granted about the Hacienda?

Ans.—I understood there were 3000 varas.

Ques.—When do you mean to say you understood this?

Ans.—I think I learnt this about the time I received possession from Real. I am not certain, it may have been subsequently.

Ques.—When you bargained and bought of the Robles two of their four "barras" did you not obtain from them the half of all their interest in the mine and its appurtenances?

Ans.—I did.

Ques.—How is it then that your deed drafted by yourself expressed only two of their barras in each of the three pertenencias of that mine?

Ans.—Quite correct. I purchased two barras, and as a matter of course the deed expressed according to mining custom all the pertenencias supposed to be comprised in a mine.

Ques.—How is it then that there was no allusion to their interest in the tract of 3000 varas around the Hacienda, which is one mile from the mine?

Ans.—The terms of the deed of sale comprise every thing; all their right, title and interest to lands and mine.

Ques.—Show what words in that instrument convey an interest in the 3000 vara tract around the Hacienda?

Ans.—It is that clause which commences "all their rights and "shares in each one of the three pertenencias," &c.

By Mexican custom a sale of barras in a mine includes an interest in the Hacienda.

Ques.—On yesterday, after reading letter "O. H. No. 20, (F. No. 6,") now again shown you, dated January 19th, 1848, you said it was at that time the policy of Mr. Alexander Forbes to conceal the character and quality of the mine. What did you mean by that?

Ans.—I meant to say it was his policy to conceal from certain parties already interested, and from others desirous of being interested, the yield of the mine, in order to induce the former to sell out and to deter others from purchasing.

Ques.—Which of the partners had he reference to at that time?

Ans.—I represented two shares of the Robles. Padre Real was one of the original company. He desired them to conceal it from Padre Real and from me as the representative of the Robles shares.

Ques.—When Alexander Forbes arrived in 1847 and during his visit did he manifest much jealousy about that mine towards you, Father Real and the neighbors?

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Ans.—Only in so far as I have stated.

Ques.—You have said that Mr. Forbes caused a survey of lands to be made about the mine; was not that survey made after the date of your copy of the "Expediente de la Mina," &c., certified by Weekes, Alcalde, and after the concession of four pertenencias by said Weekes?

Ans.—I cannot state from recollection whether it was or was not.

I do not recollect how long Mr. Lyman was there. I cannot state when he commenced or finished. It was about January or February 1848. He may have commenced in December.

Ques.—Do you know why it was that he did not follow the calls of the concession of 3000 varas in all directions around the mine?

(Objected to as assuming a fact not proved.)

Ans.—I don't know. I know very little about it. I was there very seldom.

Ques.—You have said that one object of this survey was to separate the lands of the mine from those of José Reyes Berreyesa. Did you suppose that you could settle the limits of Berreyesa by any survey of your own?

Ans.—I did not take upon myself to determine anything in the matter. I did not order the survey.

Ques.—How then were you able to say that one object of the survey was to separate the lands of the mine from those of Berreyesa?

Ans.—Because I was so informed by Mr. Alexander Forbes.

Ques.—Did he not then also inform you how it was that any survey of his was to affect the boundaries of another man's land?

Ans.—He did not.

Ques.—Were the Berreyesas called upon to be present at this survey?

Ans.—The principal representative of the family were viz, the widow and two of her sons.

Ques.—What part did they take in the matter?

Ans.—They pointed out certain limits, or a certain line to the S.W. of their house, as their boundary in that direction. This was done at the house, in the presence of Mr. Forbes, Mr. Lyman, and myself, who interpreted to Mr. Lyman.

Ques.—Did the surveyor set up any land-marks on those limits; if so, what?

Ans.—I afterwards saw two flags on that line, which I learnt had been set up by Mr. Lyman.

Ques.—Were there no heaps of stones or other permanent monuments set up?

Ans.—There may have been; I don't recollect now.

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Ques.—When you took possession of the mine in 1846, how many entrances had been made into the hill?

Ans.—One.

Ques.—You have mentioned the "poso de posesion," and another entrance, which had gone in about twenty-five feet; was there not also a cave there?

Ans.—I have mentioned but one aperture to the mine, on the left of which was the "poso de posesion." The cavity was originally natural, but that to which I testified yesterday had been excavated by the operators under Castillero, and this I alluded to as about 25 feet long.

Ans.—Was there not a cave there before 1845, where the Indians had been in the habit of resorting?

Ans.—For many years previous to that date it was known that such a cave did exist, and was considered to contain some mineral, the nature of which was not known until discovered by Castillero. The Indians were accustomed to use the ore for paint. I obtained this information from old Indians myself.

Ques.—Then in 1846 were there three apertures, the poso, the adit, and the cave—or was the adit through the cave?

Ans.—There was an artificial enlargement at the mouth of the cave. The poso was visible, but filled up to within a foot or two of the surface with débris, it was very near the mouth. The cave extended beyond the poso; the aperture had been enlarged artificially. The adit had been pushed some twenty-five or thirty feet from the mouth. The poso was on the left near the entrance.

Ques.—How deep was the cave before it was extended as you have described?

Ans.—I am unable to state. I had never been there.

Ques.—Then the depth of twenty-five feet or thereabouts, was the original length of the cave, with the addition of the artificial extension?

Ans.—It was.

Ques.—After Mr. Walkinshaw took possession of this mine as agent for Mr. Alexander Forbes, and up to the year 1850, have you heard him make any declaration with respect to the title to the mine?

(Objected to. Taken subject to objection.)

Ans.—Subsequently to his becoming an owner he made no declarations with regard to the title to the mine.

(Direct examination rested.)

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CROSS-EXAMINATION BY MR. PEACHY, COUNSEL FOR CLAIMANTS.

Ques.—Do the letters concerning which you have testified, and which have been offered in evidence, contain all the correspondence between you and Mr. Alexander Forbes, or with Barron, Forbes & Co., with reference to the mine?

Ans.—I believe they contain all the private correspondence I had with those gentlemen.

Ques.—What do you mean by private correspondence?

Ans—I mean letters alluding to matters I considered private.

Ques.—Are these all the letters you showed Mr. Laurencel?

Ans.—They are.

Ques.—When did you first hear of the discovery of the mine of New Almaden by Andres Castillero?

Ans.—In November 1845, or December, I am not certain.

Ques.—You have stated that it was notorious in 1846, that he had received possession of the mine. How long before that had you known that he had received possession of the mine?

Ans.—I had known it about 8 months; 7 or 8 months before 1846, when I bargained with the Robles.

Ques.—When did you first learn of a grant of two leagues made to Castillero on this mining possession by the Mexican Gov't?

Ans.—I do not exactly recollect; I think it was in 1848.

Ques.—Look at the letter now shown you; state in whose handwriting it is.

Ans.—It is in my hand-writing. The endorsement is in the handwriting of Alexander Forbes. I sent it to Mr. Eustace Barron, Sr., at or about the date. It was written on that day.

(Paper produced offered in evidence. Marked "O. H. X. No. 1." Objected to.)

Ques.—Look at the paper now shown you and state in whose handwriting it is.

Ans.—It is in my hand-writing, and signed by me. It was written at the time it bears date, and sent by me. The endorsement is in the handwriting of Alexander Forbes.

(Letter offered in evidence. Objected to. Taken subject to objection. Attached to deposition and marked "O. H. X. No. 2.")

Ques.—Look at the letter now shown you, and state in whose handwriting it is.

(The witness desires to say in explanation of his previous answer,

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that the correspondence which he stated to contain all his private correspondence with Alexander Forbes, and with Barron, Forbes & Co., contains all his private correspondence when he was in charge of the mine, or at and about that period. That he makes this explanation in justice to himself, as some of the letters just shown him are marked private.)

Ans.—It is in my hand-writing, and signed by me; it was written at its date, and sent to Mr. Alexander Forbes about that time.

(Objected to. Read subject to objection, and attached to deposition, marked "O. H. X. No. 3.")

Ques.—Look at the paper now shown you, and answer as before.

Ans.—It is in my hand-writing and signed by me. It was written at its date, sent to Mr. Alexander Forbes, and the endorsement is in his hand-writing.

(Objected to. Received subject to objection. Attached to deposition and marked "O. H. X. No. 4.")

Ques.—Look at the paper now shown you and answer as before.

Ans.—The hand-writing is that of Wm. E. Barron, now in Court. Signed by Barron, Forbes & Co. The signature is written by Wm. Forbes; it is addressed to me; it was received by me, I presume by due course of post. The endorsement is in my handwriting. The address is in the hand-writing of Wm. E. Barron.

(Letter offered. Received subject to objection. Marked "O. H. X. No. 5.")

Ques.—Did you hand over to Mr. De La Torre any documents and letters in your possession?

Ans.—I wrote a letter to him at the time I transferred the possession of the same to him, specifying the letters transmitted to him. I handed over to him all the letters and documents of a public nature connected with the mine. I presume this was one of them.

Ques.—Look at the letter now shown you, and answer as before.

Ans.—The body and the signature are in my handwriting. It is the letter I have just alluded to; it was sent to Mr. De La Torre with the documents and letters therein mentioned, at the time I transferred the posession to him.

(Letter offered in evidence. Objected to. Received subject to exception. Marked "O. H. X. No. 6.")

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(The Court advises the Counsel on both sides, that objections to the admissibility of all papers heretofore offered, or hereafter to be offered in evidence, need not now be stated, except such as are formal and might be removed if mentioned. And that both sides will be at liberty to urge at the final hearing all objections to the admissibility and competency of said papers, except those above mentioned, with the same effect as if the same were now particularly specified.)

(The Counsel for U. S. call upon Claimants to produce all the documents referred to in the last letter exhibited to witness, and give notice that if the same be not produced, the admission in evidence of any of said documents will be objected to, as containing only a part, and not the whole of said documents.)

JAS. ALEX. FORBES.

Subscribed in open Court, this 15th Dec. 1857.

OGDEN HOFFMAN,
Dist. Judge.

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Present: Ogden Hoffman, Judge; the District Attorney, and Mr. Randolph, for the United States. Mr. Peachy, for claimant.

THURSDAY, December 17th, 1857.

Examination of James Alexander Forbes, resumed.

Ques.—You have stated on your direct examination that you had never heard of a grant of two leagues to Castillero until 1848 or 1849. To what two sitios do you refer in your letter to Alexander Forbes, dated July 14, 1847, marked "O. H. X. No. 3," wherein you say, "I was presented," &c., (passage in letter read to witness;) and what do you mean when you say in said letter, "I could not permit," &c.? (passage read to witness.) Look at the letter and state to what you refer therein.

Ans.—I think I stated in my direct examination that I was not certain of the precise time at which I was informed of a grant to Castillero, and in the two passages referred to, I allude to the lands which I had been informed had been solicited by Castillero.

Ques.—In that letter you speak of two sitios which had been conceded to Castillero and socios; and in your last answer to your last question you say you refer to lands which had been "*solicited*" by him; why did you use the term *granted* when you referred to lands solicited?

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Ans.—The expressions used in this letter were based upon the information which I stated I had received.

Ques.—Had you been informed before you wrote that letter that there had been a grant to Castillero for two leagues?

Ans.—I had been informed that Castillero had said that he had a grant for two leagues.

Ques.—Look at the letter marked "F. No. 24, J. A. Monroe," and particularly to the words, "He Castillero, succeeded in obtaining a grant to himself for 2 sitios," &c. Is the grant of two sitios to which you therein refer the same as that to which you refer in letter "O. H. X. No. 3"?

(Question objected to as assuming that the witness has said that the grant did exist at the date of the letter, whereas the witness merely stated he had heard of such a grant. Taken subject to exception.)

Ans.—It is the same tract which, as I have before stated, I had been informed had been granted to Castillero.

Ques.—Is the grant the same as that which you have said you had heard had been made to Castillero, and to which you allude in letter "O. H. X. No. 3," as the "two leagues conceded to Castillero?"

Ans.—It is the same.

Ques.—You have said on your direct examination, that you received a notarial copy of a grant to Castillero, referred to in letter "F. No. 16, J. A. Monroe," dated Nov. 13, 1849. Look at the paper now shown you and say if this the notarial copy referred to by you.

Ans.—It is.

(Notarial copy offered in evidence. Objected to. Point reserved. Marked "O. H. X. No. 7.")

Ques.—When did you first learn that a contract of avio had been made between the proprietors of the mine and Alexander Forbes?

Ans.—To the best of my recollection, in the year 1846.

Ques.—Did you ever see a copy of that contract?

Ans.—I did.

Ques.—When did you first see it?

Ans.—I cannot state positively; I received a certified copy of it I think in 1850.

Ques.—Did you ever ratify as proprietor, any contract of avio?

Ans.—I did.

Ques.—Do you remember what contract you ratified?

Ans.—I do.

Ques.—What contract was it?

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Ans.—I ratified as one of the owners, and as representative of two others, a contract for working the mine made with Mr. Alexander Forbes, in Tepic. I am not certain whether it was made by the attorney of the parties, Mr. McNamara, or by Castillero in person and Don José Castro. It was presented to me in 1847, by Mr. Walkinshaw. I cannot state, positively, whether the contract was presented to me or not, or merely the simple ratification of it by Castillero and Castro.

Ques.—Look at the document now shown you, and state whether this is the ratification given by you to which you have referred?

Ans..—It is. The writing on the 1st, 2d, and 3d pages, and the signature, are mine. It was written at the time it bears date. The writing on both sides of the last sheet is not mine.

(Offered in evidence. Objected to. Point reserved. Marked "O. H. X. No. 8.")

Ques.—At the time you made this ratification, had you ever seen the ratification of the contract of Habilitacion made by Castillero in the city of Mexico?

Ans.—I cannot now precisely recollect what was the nature of the document presented to me by Mr. Walkinshaw in 1847, purporting to be a ratification of the contract of avio by Castillero, but I think it was similar to that which I gave.

Ques. You are certain then that Walkinshaw showed you a copy of Castillero's ratification?

Ans. He did show me a document purporting to be that ratification.

Ques. Did you read it?

Ans. Probably I did.

Ques. Was it long or short?

Ans. I think about as long as mine, possibly longer.

Ques. You have said on your direct examination, that you did not receive the document alluded to in Letter "F. No. 9." dated Dec. 1, 1849. And you also stated that you were doubtful whether the notarial copy of the grant to Castillero, which you delivered to Torre, was the document sent to Probst, Smith & Co., and referred to in letter "F. No. 9." Please examine this letter and state whether the document therein referred to as sent to Probst, Smith & Co. was a notarial copy of a grant to Castillero, or some other document.

Ans.—I cannot state precisely whether it was the document, being the notarial copy to which I have testified, or whether it was a certified copy of the contract of Avio; but I think it must have been the last mentioned document.

The document which I received and which is referred to in that letter was the certified copy of the contract of Avio.

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Ques.—Look at your letter of February 26, 1850, marked "F. No. 24, J. A. Monroe," and state if the documents therein referred to as having been sent to you in November, are the same documents mentioned in the letter of Barron, Forbes & Co., to yourself, dated 30th November, 1849, marked "F. No. 16."

Ans.—They are.

Ques.—Look at the document now shown you and state whether it is the same which is referred to in the letter "F. No. 9, J. A. Monroe, O. H. No. 7," as having been sent to you under cover to Probst, Smith & Co.

Ans.—To the best of my recollection it is.

(Offered in evidence. Objected to. Point reserved. Marked "O. H. No. 9.")

Ques.—Look at document "F. No. 25," wherein the Alcalde is requested to visit the mine for the purpose of inspecting works and of reforming boundaries of the 1st act of possession. What act of possession is referred to; when was it given, and to whom?

Ans.—It refers to the possession given to Castillero in 1845.

Ques.—It appears from your letter "F. No. 24," dated February 26, 1850, that Castillero had received a grant for two leagues on his mining possession. What mining possession did you refer to?

Ans.—The same as that of which I have just spoken.

Ques.—When you were in Tepic in 1849, did you see Castillero?

Ans.—I did not. I did not meet with him at any time during that trip.

Ques.—Did you learn where he was while you were in Mexico on that occasion?

Ans.—I think I was informed that he was in Lower California.

Ques.—When did you last see him?

Ans.—About the beginning of 1846. I am not certain as to the precise time.

Ques.—Did you ever hear of any act of possession of the mine of New Almaden being given other than that to Castillero in 1845, and that by Weekes in 1848?

Ans.—I did not.

Ques.—If there had been, would you not have been likely to know it?

Ans.—During the time I had charge of the mine I should certainly have known it.

Ques.—Would you not have been likely to know it even when you were not in charge of the mine?

Ans.—It is probable that I would.

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Ques.—Were you as well acquainted in 1846 with the mining ordinances, as you have since become?

Ans.—I was not.

Ques.—Did the people about the mine have any knowledge generally of the mining laws, as to the extent of pertenencias, &c.?

Ans.—Few if any of the inhabitants of California had any knowledge of the mining ordinances at that time. There was only one copy in California that I knew of.

Ques.—Could either of your vendors of your interest in the mine read or write?

Ans.—No sir.

Ques.—Do you know whether the Robles understood the meaning of the term "pertenencia?"

Ans.—It is possible that they may have known it. They were intimate with and constantly with Castillero and Padre Real, who had the ordinances.

Ques.—You say that in making that purchase you were governed by the partnership which Castillero had formed with the Robles, and by the notorious fact that Castillero had received a possession in 1845. Have you the original contract of partnership referred to, or a copy thereof?

Ans.—I have neither. I gave to Mr. Wm. E. Barron the certified copy of the contract which I received from the Robles at the time I made my bargain in 1846.

(Document superscribed "Año de 1845, Expediente del denuncio," &c. being document stated by witness to have been copied by him and certified to by Weekes, Alcalde, shown to witness.

Ques—Is the contract of partnership therein set forth a copy of that? a certified copy of which was given to you by the Robles.

Ans.—This is a copy of the document delivered to me by the Robles.

Ques.—State how the papers concerning which you have testified in your direct examination came into the possession of the United States Attorney.

Ans.—By virtue of a subpœna *duces tecum* to Mr. Davidson, with whom they were deposited.

Ques.—How did he get possession of them?

Ans.—They were deposited with him by myself and Mr. Laureneel.

Ques.—How came your property to be jointly deposited?

Ans.—I received a consideration from him for the use of those papers for a specific purpose.

Ques.—What was that purpose?

Ans.—Mr. Laurencel judged that those papers might be useful to

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him in procuring an amicable compromise with the parties interested in the mine of New Almaden, and he agreed to pay me a consideration for the use of them for that purpose.

Ques.—Did you ever tell him that this claim to the mine of New Almaden was fraudulent?

Ans.—I do not recollect that I ever did. His inferences were drawn, I presume, from an examination of the papers.

Ques.—Did you ever offer to go to Mexico to procure proof of the fraudulent character of this claim? And did you assure him that such proofs existed?

Ans.—Mr. Laurencel and myself had some conversations with regard to the possibility of obtaining such proofs.

Ques.—Did you ever see the document addressed by Castillo Lanzas, Minister of Relations to the Governor of California, bearing date May 23, 1846, and directing him to put Castillero in possession of two sitios on his mining possession, which has been offered in evidence by the claimants in this case as ther title?

Ans.—I have seen it. It is the counterpart of the notarial copy to which I have testified to-day.

Ques.—Do you know any thing connected with that paper having any tendency to prove that it was made on a day different from that on which it bears date, or that it is not for any reason genuine, or that there has been any fraud whatever in procuring it?

(Objected to. Point reserved.)

Ans.—I am unable to state. I do not know how or when it was procured, or by whom.

Ques.—I repeat the last question. And if you know any such fact, state what it is.

Ans.—I decline answering that question on the ground that the answer might expose me to a criminal prosecution.

Ques.—You stated on your direct examination that you had left a certain memorandum in Tepic, now shown you, marked "F. No. 21, J. A. Monroe;" you also volunteered the statement that in regard to any measure carried on by your suggestion you were ignorant of it, and that you are ignorant whether any such measure was carried on. If that be the case, how could it criminate you to answer the preceding question?

Ans.—As regards the expressions in my answer, I repeat them. Further than that I decline to answer on the same ground as that stated in my last answer.

Ques.—You have already stated that in the year 1847 you had been informed of the existence of a grant to Castillero by the Mexican Government of two sitios. You have also stated that in 1849, about

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November, you received a notarial copy of an instrument called a grant to Castillero, being the same which you were advised by Barron, Forbes & Co., in their letter of Nov. 30, 1849, had been sent to you on the 13th of that month. You have also stated that you understood this last named document to be the grant of two leagues, of the existence of which you had been informed in 1847. You have also stated in your letter of the 12th February, 1850, "F. No. 24," that Castillero had succeeded in obtaining a grant of two sitios to himself on his mining possession, and that you referred to the grant of which notarial copy had been sent you on the 3d Nov., 1849. You have also stated that the original document signed by Castillo Lanzas is a counterpart of that notarial copy. Please to state on reconsideration whether the foregoing facts were correctly stated by you.

Ans.—With the exception of a little descrepancy in the dates, and also with the explanation that this original document from Castillo Lanzas was not seen by me until some time in 1853 or 1854, I think those statements are correct.

Ques.—Do you know of any act committed by any person other than yourself, connected with the original grant, having a tendency to prove its fraudulent character?

Ans.—I do not. I am not responsible for the acts of other people.

(The question is explained to the witness and he repeats his answer in the negative.)

Ques.—What did Mr. Laurencel pay you for those papers?

Ans.—For the use of those papers he paid me $10,000.

Ques.—Was it in cash?

Ans.—It was.

Ques.—When?

Ans.—In May last.

Ques.—Was your agreement in writing?

Ans.—It was.

Ques.—Have you that copy?

Ans.—I am not certain whether it is among my papers.

Ques.—Are you not certain that it is among your papers?

Ans.—It may be. It is probable it is.

Ques.—Why do you say you are uncertain whether you have it?

Ans.—Because I have it not about me. It is probably in my house in Santa Clara.

Ques.—Why then do you express a doubt on the matter?

Ans.—Because there were two agreements, and I am not quite certain whether I destroyed both or not.

Ques.—Are you not certain you destroyed neither?

Ans. No. I am certain I destroyed one.

Ques. How many agreements did you make?

Ans. I have already said I made two.

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Ques.—Have you received no more than the $10,000 already spoken of?

Ans.—Yes.

Ques.—How much?

Ans.—I can't state exactly, as I have not realized from it; probably a few thousand dollars.

Ques.—When did you receive this last amount?

Ans.—I received a certain amount about a fortnight since.

Ques.—How much?

Ans.—A little over 2,000 dollars.

Ques.—Was that received since Mr. Laurencel testified in this case?

Ans.—Yes, sir.

Ques.—Has it been so long as a fortnight ago?

Ans.—I think about twelve or thirteen days.

Ques.—Who paid it?

Ans.—He did.

Ques.—Where and how?

Ans.—In this city, in cash.

Ques.—Where?

Ans.—I believe in Battery street, at a place at which I met him.

Ques.—In whose house?

Ans.—In Mr. Sellier's house.

Ques.—On what account was this paid?

Ans.—On account of money he testified he owed me.

Ques.—How came he to owe you?

Ans.—In accordance with his agreement with me.

Ques.—$10,000 then was not the whole consideration?

Ans.—I have stated it was not.

Ques.—Does he now owe you anything on account of that purchase?

Ans.—I am unable to state, as I do not know the result of certain negotiations now pending.

Ques.—What is that negotiation?

Ans.—The negotiation of certain notes.

Ques.—Whose?

Ans.—Notes for $3,500 drawn by James Eldridge and endorsed by Henry Laurencel.

Ques.—The negotiation is for cashing those notes?

Ans.—Yes, sir.

Ques.—When are they payable?

Ans.—In six and twelve months from date.

Ques.—When are they dated?

Ans.—Dec. 2, 1857.

Ques.—Who is to cash them?

Ans.—Any one who chooses.

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Ques.—After they are paid Mr. Laurencel will owe you nothing?

Ans.—I consider he owes me nothing now.

Ques.—Regarding those notes as worth their face, how much have you received from Mr. Laurencel?

Ans.—Viewing the matter in that light, $20,000.

Ques.—How do you make out $20,000?

Ans.—I hold two notes for $3,500 each, and received 3,000 in cash.

Ques.—Are these notes made by Eldridge or his agent?

Ans.—By his agent Mr. Hawley.

Ques.—You were subpœnæd to appear here last Monday week; you did not appear. Were you holding back to procure from Mr. Laurencel the payment?

Ans.—I was not holding back precisely as you state. I was detained by illness in my family. I am free to say that I have appeared here against my will.

Ques.—Where were you last Monday week?

Ans.—In my own residence at Santa Clara.

Ques.—Where on the following day?

Ans.—I went to what was once my rancho.

Ques.—Where during the remainder of the week?

Ans.—Principally there.

Ques.—When did you come to San Francisco?

Ans.—Last Sunday I heard that an attachment had issued against me, and on learning it, I immediately came to present myself before this honorable Court to purge myself of the contempt.

Ques.—For how long a time has Mr. Laurencel been owing you $10,000 on that contract?

Ans.—I can't recollect exactly.

Ques.—Don't you remember the terms of the contract?

Ans.—I can state them for your satisfaction. Witness states the terms of the contract. The second $10,000 was to be paid, provided Mr. Laurencel succeeded in making a compromise. If not, the matter was to be left for further arrangement.

Ques.—When was the last adjustment made?

Ans.—About the second day of December.

Ques.—Was that the occasion when he pledged a rancho to you?

Ans.—He never did pledge a rancho to me.

Ques.—Not verbally?

Ans.—That is another thing. He did give me a verbal assurance to that effect.

Ques.—You say you own no interest in the mine of Almaden now?

Ans.—No, I do not.

JAMES ALEX. FORBES.

Subscribed in open court, this 17th Dec., 1857.

OGDEN HOFFMAN,
Dist. Judge.

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FRIDAY, December 18th, 1857.

Present: Ogden Hoffman, Judge, &c.; Mr. District Attorney and Mr. Randolph, for the United States; Mr. Peachy, for the Claimants.

Cross-examination of James Alexander Forbes resumed.

Question.—When did you receive the Eldridge notes?

Answer.—On the 2d December.

Ques.—Had you refused to give your tertimony, or expressed an unwillingness to testify, so long as Mr. Laurencel owed you $10,000?

Ans.—From the commencement of the negotiation with him, I told him that it was incompatible with my position to testify in this case.

Ques.—How came your final settlement with Mr. Laurencel to have been made just after he had given his testimony, and a very short time before you came on the stand to give your's?

Ans.—As I never consented to the presentation of any papers before any Court, I opposed their introduction here, stating my objection to the Court, but being apprehensive that they would ultimately be introduced, I stated to Mr. Laurencel that we must have some arrangement with regard to the ultimate payment, which was effected.

Ques—That was after the papers had been brought into Court by Mr. Davidson?

Yes, sir.

Ques.—These papers were then put to a use which would have been a gross violation of Mr. Laurencel's contract with you if he had procured them to be so used? Is it not so?

Ans.—It is true that it was against the letter of his contract with me. But I was informed that he was compelled to do it by the force of circumstances here.

Ques.—What circumstances do you refer to?

Ans.—I have no personal knowledge of those circumstances.

Ques.—What circumstances were those which you were informed existed?

Ans.—I am unable to state; they were not particularized to me.

Ques.—Were you satisfied with the explanation given to you?

Ans.—I was not, and therefore opposed the presentation of these papers here.

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Ques.—In what respect was the explanation unsatisfactory to you? Did it fail to satisfy you that these papers had been used without Mr. Laurencel's consent or procurement?

Ans.—It failed to satisfy me in all respects; I am unable to state whether they were used without his consent or concurrence.

Ques.—Did not your dissatisfaction, in part, arise from the fact that these papers were used before you were paid by Mr. Laurencel?

Ans.—I cannot say that it did; I was at all times averse to having the papers used, as was evident by my objection in Court the day they were presented.

Ques.—Was it not understood between Mr. Laurencel and any other persons and yourself, at the time of the treaty for those papers, or any other time, that your testimony would be required to prove that they were correspondence between you and the persons by whom they purport to have been written?

Ans.—It was not understood so until after their presentation, when it was signified to me that it would be necessary so to prove.

Ques.—Were you not present when Mr. Laurencel's testimony was given in this case on Nov. 28th?

Ans.—I was present.

Ques.—After the Attorney for the United States attempted to prove by that witness, by means of your declarations to him, that these letters constituted the correspondence between you and the persons by whom they purport to have been written, and the Court refused to admit such delarations in evidence, were you not told by Mr. Laurencel or any other person, that your testimony was essential to give effect to these letters, and were you not requested to testify for that purpose, and was not your final settlement with Mr. Laurencel, consisting of the payment of three thousand dollars in cash, and the assignment of Eldridge's two notes for $3,500 each, made on the condition, or with the understanding, or under a promise on your part, that you would testify in this case?

Ans.—No, sir. I have already answered that it was stated to me by the counsel for the United States, that it would be necessary to prove the identity of those papers; my ultimate arrangement with Mr. Laurencel emanated from himself and was, not made contingent upon my testifying, other than I have already stated.

Ques.—When you refused yesterday to answer a question on the ground that it might tend to criminate you, did you suppose that an answer in the negative to that question would criminate you, because it might be contradictory to some statement, verbal or written, under oath or not under oath, made by you to Mr. Laurencel, or any other person, and not in any court of justice?

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Ques.—I decline to answer at all, on the ground that it involves me in a criminal prosecution.

(Counsel for claimants request the Court to compel an answer to the question. The Court refuses so to do, whereupon counsel for claimants excepts. Exception noted.)

Ques.—Were you not one of the defendants in the suit of James Tobin et al, vs. Robert Walkinshaw et al, in the Circuit Court of the United States for this District?

Ans.—I was.

Ques.—Was that a suit in Chancery, instituted to obtain injunction to restrain defendants from working the mine of New Almaden, and for the appointment of a receiver and for other purposes?

Ans.—I do not exactly recollect; I was made a defendant in several suits, even when I had no interest in the mine.

Ques.—Did you make an answer in that suit, and was it under oath?

Ans.—I think I was made to make several answers in those different suits. I presume Mr. Peachy alludes to one that was printed; That answer was made in my name, and those of several other parties.

Ques.—Was it sworn to by you?

Ans.—I think it was.

Ques.—Have you still any interest in the Almaden mine?

Ans.—I have not.

Ques.—What was your interest; to whom did you sell; and when and what did you ask for it?

Ans.—My interest was two barras, that is 2-24ths; I sold one in 1850 or 1851 to Mr. John Parrott for the sum of $24,000, part in cash and part payable on long terms; I sold the other to Mr. Wm. E. Barron for $30,000 in 1855.

Ques.—Have you been paid all the money for which you sold the two shares?

Ans.—I have.

Ques.—Do either of those deeds contain a warranty?

Ans.—I think the first contained a warranty against every body but the United States. The second was a quit-claim.

Ques.—Look at the document shown you; state what it is; in whose writing, and by whom signed?

Ans.—This is a deed to which I have just testified for one share of the Almaden mine, sold to Mr. Wm. E. Barron; it is in my handwriting and signed by me; it is the second deed made by me for this same share, the draft of which was sent to me by Mr. Halleck.

Ques.—What part of the mine is a barra?

Ans.—One twenty-fourth.

Ques.—Look at the articles of partnership between Castillero and his associates, by which you said you were guided when you purchas-

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ed of the the Robles, and say what interest, under the contract, you learnt the Robles had at the time you made the contract?

Ans.—Four barras.

Ques.—How many barras are named in that instrument?

Ans. Four.

Ques. Among all the partners I mean?

Ans. It is not explicitly stated; there are 24.

Ques. What is there stated?

Ans. Witness reads clause from contracts, wherein Castillero disposes of one-half his interest, and divides that half into three acciones of four barras each.

Ques. In examining the contract of partnership, where did you find the expression "las tres pertenencias de la mina," used in the deed of sale from Robles to you?

Ans. I did not find it any where; I was informed by the agent of Castillero, Padre Real, that the mine comprised three pertenecias.

(The last part of the answer objected to.)

(Answer signed by witness produced from files of Circuit Court, shown to witness.)

Ques. Is that the answer made by you in the suit before mentioned?

Ans. It is. It was sworn to me as a document prepared by the counsel for the mine, I not being interested in the suit. As regards the facts therein set forth, they are derived principally from information from other parties. As to the facts set forth in paragraphs 29, 30, 31, which have been read to me, they were stated by me on information derived from others. I make the same observation with regard to the whole of the answer, except where I make statements based on my own knowledge.

(Counsel for claimants offers in evidence the paragraphs 29, 30, 31.

Counsel for United States requires the whole answer to be put in evidence, if any part is so received.

The Attorney for claimants expresses his reluctance so to do, on the ground that the answer is voluminous, and in great part irrelevant, and that he does not wish to encumber the record; and offers to put in evidence such parts as the attorney for the United States may select as relevant to the matter in issue.

The counsel for United States expresses his inability to make such

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selection as suggested, and requires the whole answer to be put in, to which counsel for claimant accedes.)

Ques. At the time you made that answer, had you not seen the documents referred to by you in the 31st section?

(Witness desires to see the section alluded to.)

Ans. I stated that I had seen the notarial copy to which I have testified, but it must be evident that what is there asserted, is based on information of other parties. I could not know whether the President of Mexico was pleased or not pleased.

Ques.—You stated yesterday that you had seen the original, which is a counterpart of the notarial copy referred to by you, some time in 1853; why do you now speak in your last answer only of the notarial copy?

Ans.—It is very true that I did state I had seen a document purporting to be such original. I saw it in the hands of Mr. Wm. E. Barron or Mr. Peachy. I mentioned the notarial copy because I had been more familiar with it. I did not mean that I had seen only that copy.

Ques.—When you put in this answer, did you have any reason to believe that the document claimed to be a title in colonization mentioned in the 31st section of said answer, was not made at the time it purports to have been made, or was not genuine, or was in any manner affected by fraud?

Ans.—I am compelled to decline to answer that question for the reason before given.

Ques.—When you made this answer, did you have any reason to believe that what is stated in the 29th section as to Antonio M. Pico, Alcalde, on the 30th Dec., 1845, having put Andres Castillero in possession of said mine and having granted to him said tract of land was not true?

Ans.—No, sir. So far as regards the possession, some sort of a possession, possibly of 3,000 varas, I had no reason to believe it untrue.

Ques.—Had you any reason to believe at the time you put in that answer, that the facts stated in the 30th section thereof, were not true?

Ans. I decline to answer on the same grounds as before.

Ques.—Look at the document marked "F. No. 11, O. H. No. 9," compare it with the document now shown you, and say whether one is a press copy of the other?

Ans.—I believe the latter to be a press copy of the former.

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Ques.—Look at the words in F. No. 11, "I have every reason to believe the documents you mention will be found in the city of Mexico;" look at the same words in the press copy; say what difference you find.

Ans.—The word "found" is underscored in the original and not in the copy.

Ques.—Have you not within the last two years taken the benefit of the insolvent act?

Ans.—I have.

Ques.—When were the proceedings instituted, and where? What was the date of your discharge?

Ans.—The proceedings were in the Court for the 3d Judicial District of California, in November, 1856. I obtained my discharge I think in January of this year.

Ques.—What was the amount of your liablities?

Ans.—I don't recollect. As near as I can recollect $100,000 and odd.

Ques.—Were Bolton, Barron & Co. among your creditors?

Ans.—They were; for the amount of a note of mine which they had discounted without my knowledge. It was payable to other parties.

Ques.—How much was you their debtor?

Ans.—The amount of that note, $3,200, and a small balance of $80.

Ques.—Did you after your discharge attempt to borrow from them, and if so, what amount?

Ans.—In consequence of the oral and written statements of those gentlemen that my services in their behalf, in the negociation of the mine, had been very beneficial to them, I was inspired with the hope that in the storm of adversity which had overtaken me, they were the persons to whom I should apply for aid. I did apply for a loan of $10,000 to make certain investments I desired to make, upon which I offered to secure them. I was informed by the senior partner. Mr. Bolton, that he would confer with Mr. Barrron, and after one week, in which I was every day at their office, I was informed by Mr. Bolton that my proposition could not be entertained.

Ques.—Was it after their refusal that you sold to Mr. Laurencel the use of these papers?

Ans.—It was.

DIRECT EXAMINATION RESUMED.

(Counsel for U. S. reads notice to produce certain paper served on Counsel for Claimant, August 20, 1857, and calls for the same.

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The Counsel for Claimant states that he does not know whether he has them or not, not having had time to examine. Counsel for U. S. offers certified copies in evidence, and offers to allow Counsel for Claimant to introduce and substitute for the same the originals, if the same are in his possession. Objected to. Point reserved.)

Ques.—Look at document marked "H. L. No. 1," purporting to be a certified copy from Recorder's office of four acts of sale, each of one barra, made at Tepic by José Castro to Alexander Forbes, dated respectively March 1st, 1847, April 12, 1847, April 16, 1847, and May 10, 1847, and state whether you filed the originals of which these purport to be copies, for record in the Recorder's office of Santa Clara county?

Ans.—I did.

Ques.—When?

Ans.—In April, 1854, as far as my recollection serves me.

(Certified copy offered in evidence. Objected to. Point reserved. Marked "O. H. No. 28½" and attached to deposition; also translation marked "O. H. No. 29.")

Ques.—Look at paper marked "H. L. No. 4," purporting to be a deed from S. & T. Robles, by yourself as their attorney, to Robert Walkinshaw, one of the claimants, and state if you made such a deed of which this is a copy.

Ans.—I executed that deed. This is a copy of it to the best of my recollection.

(Deed offered in evidence. Objected to. Point reserved. Marked "O. H. No. 30."

Ques.—Look at this paper marked "H. L. No. 5," purporting to be a certified copy of a deed from J. M. Real to Robert Walkinshaw, dated August 9, 1849; state whether you have any knowledge of a sale by Padre Real to Walkinshaw of one barra as set forth in that deed.

(Objected to.)

Ans.—I do.

Ques.—Is that a copy of the deed to the best of your knowledge?

(Objected to.)

Ans.—I was cognizant of the fact of the sale at that time. I once

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madr a copy of the deed from the records soon after the time of the sale. I believe this to be correct.

(Deed offered in evidence, and translation. Objected to. Point reserved. Marked "O. H. No. 31" and "O. H. No. 32.")

Ques.—Look at this paper marked "H. L. No. 2," purporting to be a certified copy of a deed from Andres Castillero to Alexander Forbes; read it and say what you know about it.

Ans.—I was cognizant of the fact of the purchase of 3 barras in the mine of Almaden by Alexander Forbes from Padre Real, at the time he was here in 1847. I never saw the original, but have seen it on record.

Examination suspended.

GEORGE M. YOELL CALLED ON THE PART OF THE UNITED STATES.

Ques.—What is your business, &c.?

Ans.—I have been employed from March to October of this year in the Recorders office of Santa Clara county.

Look at the certificate to this paper marked "H. L. No. 2," and say whether you are the person who made it, and at whose request.

Ans.—I am. I made the copy certified to, at Mr. Laurencel's request. I copied it from the records in the office, from "Book 3 of deeds," which contains the old Spanish records. It was found in the old Juzgado or Alcalde's office. They were transferred there when the State Government was formed. I do not know the fact; it is so considered in the Recorder's office.

(Paper offered in evidence; also translation. Objected to. Point reserved. Marked O. H. No. 33. O. H. No. 34.)

JAMES ALEXANDER FORBES' EXAMINATION RESUMED.

Ques.—Will you produce the original power of attorney spoken of by you?

Ans.—In expectation of being ordered to produce it I sent for it, and received it yesterday.

(Paper produced.)

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Ques.—Look at this paper purporting to be a power of attorney to yourself from Alexander Forbes, dated April 23d, 1849, and say if the signature is genuine, and in whose handwriting it is, and whether you received it at the time of its date.

Ans.—The signature is the genuine signature of Alexander Forbes. The body is in the handwriting of Mr. Wm. E. Barron. I received it in Tepic, Mexico, in May, 1849.

(Paper produced in evidence. Marked "O. H. No. 35.")

Ques.—Look at paper marked "H. L. No. 7," and say whether you made the original deed of which this a copy.

Ans.—I did. I believe this to be a copy of my deed.

(Marked "O. H. No. 36.")

Ques.—Look at "H. L. No. 8," purporting to be a copy of a deed by yourself to Henry Laurencel of $\frac{3}{4}$ths of one 24th. Did you make such a deed and is this a copy of it?

Ans.—I did make such a deed, and I believe that to be a copy. I desire to state that prior to my sale of one barra to Mr. Barron I had re-acquired the three-twentieths previously sold by me.

(Paper offered in evidence. Marked "O. H. No. 37.")

(Counsel for U. S. offers certified copy of deed to Bolton, Barron & Co. of three-twentieths of a barra, marked "H. L. No. 9." Marked by the Court "O. H. No. 38." Also certified copy of deed from Bolton & Barron to F. E. Fernandez; marked "O. H. No. 39." Also copy of a deed from F. Fernandez to J. F. De Leon, marked "H. L. No. 11." Marked by the Court "O. H. No. 40.")

Ques.—Look at paper marked "H. L. No. 12," and say did you receive such a deed; and if so, what did you do with the original, and is this a copy?

Ans.—I did receive it. I filed the original for record; it is now in my possession. This is a copy of it I think.

(Deed admitted by consent. Marked "O. H. No. 41.")

(Paper produced marked "H. L. No. 13.")

Ques.—Did you make such a deed, and is this a copy of it?

Ans.—I did. This is a copy to the best of my knowledge.

(Marked "O. H. No. 42.")

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Ques.—Look at this paper marked "H. L. No. 14;" did you make the original, and does it refer to the same barra as the last deed?

Ans.—The original is already in evidence. I made it, and it refers to the same barra.

(Deed offered in evidence. Marked "O. H. No. 43.")

Ques.—Look at this paper, "H. L. No. 15," purporting to be a certified copy of a deed from Jecker, Torre & Co. to Barron, Forbes & Co., made in the City of Mexico on 7th December, 1852, and say if you know anything of the original.

Ans.—I have seen the record of such a deed in the Recorder's office of Santa Clara county.

(Copy offered in evidence. Objected to. Point reserved. Marked "O. H. No. 44," and translation marked "O. H. No. 45.")

Examination adjourned until Saturday, Dec. 19th.

JAS. ALEX. FORBES.

Subscribed before me, this 18th Dec., 1857.

OGDEN HOFFMAN.

BEFORE THE DISTRICT COURT OF THE U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

SATURDAY, December 19, 1857.

Present: Ogden Hoffman, Judge; Counsel for United States; Mr. Peachy for Claimants.

James Alexander Forbes' Examination resumed.

(Counsel for United States offers deed from Andres Castillero to Frederick Billings, Oct. 2d, 1856. Also deed from F. Billings to Wm. E. Barron, Nov. 18, 1856. Execution admitted. Objected to as irrelevant—point reserved. Marked "O. H. No. 46," and "O. H. No. 47.")

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(Counsel for United States offers an additional extract from Exhibit attached to deposition of José M. Lafragua in this case, which extracts are not included in the transcript. Admitted by consent. Marked "O. H. No. 48," and translation marked "O. H. No. 49."

Also certified transcript from records of District Court for Third Judicial District, Maria G. Bernal de Berreyesa et al. vs. James Alexander Forbes and Robert Walkinshaw, complaints in trespass and ejectment, marked "O. H. No. 50."

Also, bill and in suit in this Court, Berreyesa et al. vs. Forbes et al, marked "O. H. No. 51." Objected to as irrelevant.)

Ques.—When did you first hear this mine called "New Almaden"?

Ans.—I don't exactly recollect; about the time of the arrival of Mr. Alexander Forbes in California.

Ques.—Was it before or after Mr. Walkinshaw arrived?

Ans.—I think it was after.

Ques.—Who was the person whom you heard say, that he had heard Castillero say, he (Castillero) had a grant?

Ans.—My answer yesterday did not specify the person; I said I had heard a person say that he had been informed that Castillero had said he had a grant; that person was Robert Walkinshaw. He informed me that Mr. Alexander Forbes had told him that Castillero had said he had a grant.

Ques.—Was that the same Mr. Walkinshaw who sued you in 1849 before Alcalde May, and whom you then charged with being interested with Horace Hawes, in an attempt to denounce the mine.

Ans.—It was; perhaps it would be incorrect to say he he sued me; I opposed his proceedings growing out of that denouncement.

Ques.—Were there not two suits pending at the same time, one for the denouncement of the mine, and the other for the possession?

Ans.—There were two suits nearly simultaneous. This Robert Walkinshaw was the same man with whom I had the litigation in 1849.

Ques.—Have you not heard the same Walkinshaw say that the title was all a fraud and a humbug? and what have you heard him say?

(Objected to. Question withdrawn.)

Ques.—Have you not heard Mr. Walkinshaw make declarations different in purport from that to which you have alluded?

(Objected to. Point reserved.)

Ans. Mr. Walkinshaw has made statements to me that there was no title to the mine, and signified to me his wish that I should coöp-

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erate with him in obtaining a title from the Berreyesa's. The first declaration to that effect of Walkinshaw to me, was before he was a partner in interest, and the latter, which is the one to which I principally allude, was after he became a party in interest.

Qns.—About what time were these declarations made?

Ans.—In 1847 and 1849.

Ques.—About what time was it that he made the declaration in favor of the title to which you have referred?

Ans.—It was in 1847, a short time prior to his departure for Mexico.

Ques.—Which was made first?

Ans.—It was on the occasion of his return from Mexico that he stated to me he had been informed that Castillero had got a grant. I desire to correct a previous answer as taken down by the Court. Mr. Walkinshaw related to me what Mr. Forbes had stated he had heard Castillero say, in 1847 on his return from Mexico.

Ques.—When did first you hear him say there was no title?

Ans.—Prior to his departure for Mexico.

Ques.—When did you hear him say so the second time?

Ans.—In 1849. It is so set forth in his complaint against me at that time.

Ques.—Did you ever hear him orally make such declarations?

Ans.—He told me so himself, before the commencement of those difficulties.

Ques.—Was the last occasion before or after he became interested in the mine?

Ans.—He was then interested in the mine.

Ques.—Look at the letter "O. H. X. No. 8;" say how you transmitted that letter to Alexander Forbes.

Ans.—I do not remember.

Ques.—That being a time of war, what manner were you enabled to correspond with alien enemies?

Ans.—The only opportunity in general, was by vessels of war.

Ques.—Did American vessels of war carry your commercial correspondence to merchants in Mexico?

Ans.—I did not say American vessels of war.

Ques.—Can you say they did not carry your correspondence of that nature?

Ans.—I do not recollect of having sent correspondence by American men-of-war. I may have done so; I do recollect of having sent by British men-of-war.

Ques.—What American man-of-war, is it possible, would have carried a letter from you to an alien enemy?

Ans.—It is possible, but not probable; letters might have been sent by a private hand on board; especially considering the friendly rela-

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tions between gentlemen on board those vessels, and the persons to whom I desired to write.

Ques.—Do you mean amity between American officers and British merchants resident in Mexico?

Ans.—I do. I don't mean amity in the strict sense of the term, but merely friendly relations arising from hospitalities received, &c.

Ques.—Did you send this letter (O. H. X. No. 3) by an American vessel-of-war?

Ans.—I cannot remember.

Ques.—Did you send it by a British man-of-war?

Ans.—I cannot state.

Ques.—What British man-of-war left the ports of this State for the ports of Mexico about that time?

Ans.—I am unable to state. There was a British frigate commanded by Capt. Duntz, which left here about that time. I think after the date of that letter. I can't say how long after.

Ques.—Did you send this letter by that frigate?

Ans.—I can't say. I now recollect that she left before the 14th July, 1847.

Ques.—Was it not your custom to express in your letters by what conveyance they were sent?

Ans.—It was not my custom to do so in every case. I generally did so.

Ques.—Was it not Mr. Alexander Forbes' custom to endorse on the letters when he received them?

Ans.—I believe it was generally his custom.

Ques.—Is this so endorsed?

Ans.—It is not.

Ques.—When did you last see this letter before it was produced here?

Ans.—I don't recollect.

Ques.—Had you seen it at any time since the year 1847?

Ans.—I had not.

Ques.—Did you see it at any time in the year 1847, after its date?

Ans.—I do not recollect that I did.

Ques—Was it among the papers which you turned over to Mr. De La Torre?

Ans.—I am unable to state whether it was or not. I think not.

Ques.—Was it received by Mr. Forbes before he left Mexico for this country?

Ans.—I do not know whether it was or not.

Ques.—Are you absolutely certain it was written at or about the day of its date?

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Ans.—I think it was.

Ques.—What did you take the letter to the light for?

Ans.—I was looking to see the water-mark.

Ques.—Why do you speak doubtfully on the subject?

Ans.—I think it was written at that time. I have no reasons for supposing it was not.

Ques.—By what conveyance did Mr. Walkinshaw return to Mexico in 1847.

Ans.—By the British schooner "William."

Ques.—In what month?

Ans.—I am unable to state. At the commencement of 1847; in the spring I think.

Ques.—What opportunity had you to write to Tepic after Walkinshaw left and before Alexander Forbes arrived?

Ans.—I do not now recollect.

Ques.—Were there any?

Ans.—I am unable to state.

Ques.—In what vessel did Walkinshaw return to California with Alexander Forbes?

Ans.—The British schooner "William."

Ques.—How is it that you can remember what vessel left before the date of that letter and that it was the same vessel that returned a month or two later, and cannot form even a conjecture of what vessel it was by which that letter was sent, or of any vessel leaving about that time?

Ans.—The fact of the arrival of the schooner William is impressed on my memory from the circumstance of her having been seized by Com. Biddle when she arrived in Monterey. I went there officially to represent to him her neutrality. She was condemned but subsequently allowed to depart, and subsequently returned, I don't know under what flag or how.

Ques.—Please name all the British ships which arrived in or left the ports of Upper California during 1847, which came to your knowledge as British Vice Consul.

Ans.—It is impossible after so long a period of time to recollect. I do not remember any.

Ques.—Then I understand you to say that you have no idea when or how that letter got out of California to Mr. Alexander Forbes.

Ans.—I don't recollect.

Ques.—Look at letter "O. H. X. No. 1," dated Jan. 30th 1846, and state whether means of communication between San Blas and the ports of California were frequent or unfrequent at that time.

Ans.—They were unfrequent.

Ques.—Read that letter and see if it will aid you to recollect what opportunity you had of sending letters next after its date.

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Ans.—I don't recollect.

Ques.—Do you recollect of having had any between that date and the day Andres Castillero left the country?

Ans.—I do not.

Ques.—Was there any at all?

Ans.—I think not; at all events, from this part of the coast.

Ques.—Yesterday you were shown a sworn answer in Chancery made by you. Was Mr. Wm. E. Barron, one of the co-defendants, in the country at that time?

Ans.—I am not certain whether he was or not.

Ques.—As far as you were concerned, what was the result of the suit?

(It is admitted that he still remains a defendant in the Equity suit, and that a verdict of acquittal was entered in his favor in the ejectment suit, on proof that he had no interest in the premises, and that an injunction was refused as prayed for in the Equity suit.)

Ques.—After you were acquitted in the suit at law, were you ever spoken to to become a witness in that suit; if so, by whom?

Ans.—I don't recollect any person asking me to testify.

Ques.—Why was it that you, who had no interest in the mine, answered so much at length, and why did you not simply disclaim any interest in the matter?

(Objected to.)

Ans.—As far as I recollect I declined to answer, but it was intimated to me that I was interested on account of previous rents and profits, and owing to my previous relations with parties interested I did not like to refuse.

(Foregoing answer objected to on the ground that Defendant Forbes' obligation to answer is a matter of law, and the above question asks the witness' opinion as to his legal obligation.)

Ques.—What was the character of Weekes, Alcalde, for intelligence and sobriety and education?

(Objected to as tending to impeach the character of Weekes, a witness for United States.)

Ans.—He is a man of limited education, addicted to intemperance at times, nevertheless intelligent and honest.

Ques.—In what capacity did he come to this country?

Ans.—I think as an ordinary seaman.

Ques.—Is the Mr. McNamara mentioned in letter "F. No. 3. O.

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H. No. 18," the Irish priest of that name who had the grant for the whole valley of San Joaquin?

Ans.—He is the same individual who attempted to get that grant from the Departmental Gov't.

Ques.—Do you know any thing of this "power" spoken of in this letter?

Ans.—I know he had a power of attorney from the information he gave me, and again from Padre Real, and subsequently from Mr. Alexander Forbes.

Ques.—Was Gen. José Castro a party constituent to that power?

Ans.—I believe he was.

Ques.—Where was it executed, according to your aforesaid information?

Ans.—In Monterey.

Ques.—When?

Ans.—In June 1846.

Ques.—Did McNamara arrive as early as that in Monterey?

Ans.—He did.

Ques.—When Gen. Castro retreated from Upper California, do you know of his having left any blank signatures in this State, if so with whom?

(Objected to as irrelevant.)

Ans.—I saw in the hands of Padre Real, blank sheets of paper with Castro's signature at the end of the last page.

Ques.—Do you know of any one or more of them having been filled up; if so, by whom, and for what purpose?

Ans.—I do know that one sheet was used by the said Padre Real, for the purpose of renouncing his right to the donation of his share in the mine. This was addressed to José Castro, the representative of Castillero. An acceptance of this was written above Castro's signature. The renunciation was made, because Real being a "regular," was prohibited by the ordenanzas from holding an interest in a mine.

Ques.—Who obtained this renunciation, and for what purpose?

(Objected to, as irrelevant, and because offered to show general character of Padre Real, and to explain the policy of Alexander Forbes, alluded to by the witness, as declared among other objects by counsel for the U. S.)

Ans.—I think it was suggested to Padre Real by Mr. Walkinshaw, that a renunciation of his interest was necessary, because the ordenanzas prohibited a "regular" from holding an interest in a mine, and he

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having received this donation from Castillero, renounced it in favor of his donor. The reason why it was communicated to Castro, in the manner I have stated, was because Castro was not in California.

Ques.—What was the date affixed to the papers?

Ans.—I don't know.

Ques.—Was it made as of a time when Castro was here?

Ans.—I cannot state.

Ques.—Do you know why Walkinshaw interested himself to procure this renunciation?

Ans.—It was understood that Padre Real, as agent of Castillero, should sell three barras to Alexander Forbes.

Ques.—Are those the three shares which appear by the deeds to have been sold to Forbes?

Ans.—They are the three shares sold by Real to Alexander Forbes.

Ques.—Do you know of Real's filling up any other blank?

Ans.—I do not.

Ques.—Did you ever see the contract of avio which Alexander Forbes speaks of having made in letter "F. No. 3. O. H. No. 18?"

Ans.—I don't recolledt of having seen it until I received it at the end of 1849 or beginning of 1850. I mean the paper called "Habilitacion," spoken of to me in the letter of Dec. 1, 1849.

Ques.—Your ratification of the contract is of a date prior to your receipt of the document, is it not?

Ans.—It is.

Ques.—When you ratified the contract of avio, you had therefore never seen any copy of that contract in which was set out at large the document signed Castillo Lanzas, called a grant by claimants in this case?

Ans.—I had not seen any such. Mr. Walkinshaw presented me with a draft of a ratification from which I wrote mine. They are conceived in about the same terms.

Ques.—The first time you ever saw any ratification of that avio, containing the Castillo Lanzas document was when you received it as aforesaid?

Ans.—It was.

Cross-Examination Resumed.

Ques.—When did Mr. Walkinshaw first arrive in California?

Ans.—I think in the winter of 1847, or the beginning of 1847, I am not certain as to the date.

Ques.—Did he arrive in January?

Ans.—I cannot state.

Ques.—How long was he in charge of the mine?

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Ans.—He was a short time in charge before he left for Mexico. He was absent a few months and retained charge of the mine until August, 1849, when he delivered it to me.

Ques.—Did he receive a salary as agent?

Ans.—I presume he did.

Ques.—I understand you to have said that three declarations were made to you by him: one before he left for Mexico, to the effect that the title was not good. The second was after his return, when he informed you what Alexander Forbes had said Castillero had said; and again, that duringthe litigation in 1849, he said the title was not good, being the same statement substantially, as is set forth in his complaints in that litigation.

Ans.—I did not mean that he made formal declarations, but he so expressed himself on those occasions.

Ques.—It appears now, that when your letter of July 14, 1847, was written, Mr. Walkinshaw had never told you that Castillero claimed to have a grant of two leagues.

Ans.—I cannot see how that would follow. It is claimed that I have contradicted myself, because I had stated that the first information I obtained of Castillero's grant was from Mr. Walkinshaw, but I stated I was not certain of the time when I had been so informed. I did not state that Mr. Walkinshaw's communication to me to that effect, was posterior to this date.

Ques.—You stated that you were positive that when Mr. Walkinshaw informed you of what Alexander Forbes said he had been told by Castillero, it was after Walkinshaw's return from Mexico. Had he returned on the 14th July, 1847?

Ans.—I think I said he had so informed me, to the best of my recollection. Mr. Walkinshaw returned subsequently to July 14, 1847. I wish to state I was in error. It is difficult to retain in memory such events after the lapse of ten years.

Ques.—Then you must have received this information from Mr. Walkinshaw before he left California in the spring of 1847.

Ans.—Yes, sir.

Ques.—What was the character of the litigation between Walkinshaw and yourself in 1849?

Ans.—In the first place, the character of the litigation ccmmenced by Horace Hawes, in connection with Walkinshaw, was a denunciation of the mine, for an abandonment claimed to have occurred while I was in charge; and the next suit was against me as a trespasser without title.

(Petition of Walkinshaw in second suit read.)

Ques.—How could he say that the title was not good?

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Ans.—I don't know; but I state it to be a positive fact under oath that on the planila of the mine, in the presence of a civil officer, who was restoring me to the possession, of which he, Walkinshaw, had forcibly deprived me, and of several others, among whom was K. H. Dimmick, former Alcalde of San José, Walkinshaw stated I had no title, that my constituents had no title, and that the property belonged to him.

Ques.—I recall to your attention the litigation. Did Mr. Walkinshaw therein claim that there was no title by Registry?

Ans.—It may be considered there were two suits, but in reality they were one. In my previous answer I did not refer to those papers, for I had not examined them, but to the declarations of Walkinshaw publicly made in and about San José. I wish further to explain that when he took a mortgage upon the Berreyesa's property, it was to secure himself, because he was uncertain and doubtful of the title to the mine.

Ques.—At the time then that Mr. Walkinshaw made these declarations he had an adverse interest?

Ans.—I don't know. He wanted to have two strings to his bow, and therefore obtained a mortgage from the Berreyesa's.

Ques.—Did he not have an interest in the Hawes' denouncement?

Ans.—I think he was the principal party in the operation.

Ques.—Was not Mr. Walkinshaw mortified at his displacement and his being superseded by you?

Ans.—I think it possible he may have had some feeling on the subject. But before he was superseded he had acquired the interest from Berreyesa, and the actual abandonment of the mine had taken place.

Ques.—Did not the brig Lady Shaw Stewart and the schooner Santa Cruz sail from Monterey for the southern coasts in the months of July or August, 1847?

Ans.—I don't recollect. It is possible; but if so, it has escaped my memory.

Ques.—Look at letter now shown you and state in whose handwriting it is?

Ans.—It is mine; my signature. I wrote it at its date. I sent it to Mr. Alexander Forbes. It is endorsed in handwriting of Walkinshaw.

(Letter offered in evidence. Objected. Marked "O. H. X. No. 7½.")

Ques.—Did Mr. Walkinshaw show you any documents besides the draft of the ratification previously spoken of?

Ans.—No, sir. When I asked him in 1849 to show me his documents, he swore he hadn't any.

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(Letter dated 7th January, 1847, read to witness—from Alexander Forbes to witness.)

Ques.—When did McNamara leave California?

Ans.—In the latter part of July, 1846. He went to the Sandwich Islands. I received a letter from him at the Islands, dated, I think, in October, 1846. He arrived in Mexico at the latter part of 1846.

Ques.—Have you any reason to believe he was not in Tepic on the 28th November, 1846?

Ans.—I have not.

Ques.—When did Castro leave California?

Ans.—Soon after the occupation by the Americans. He returned in 1847 or 1848; I could'nt say when; he was a long time absent.

Ques.—Do you remember to have seen the signature of Castro on the top of the second page?

Ans.—I cannot state its precise position. My impression is it was on bottom of third or fourth page.

(Letter "F. No. 9, O. H. No. 7," read to witness.)

Ques.—Did you examine at Monterey for the purpose of obtaining that document?

Ans.—I did not.

Ques.—When did you first show this letter to Mr. Laurencel?

Ans.—I think last January.

Ques.—Look at pencil memorandum of "F. No. 6, O. H. No. 20," in whose handwriting is it? to what does it refer?

Ans.—It is in my handwriting, and refers to the shares to be divided out of the mine of San Antonio, which I was commencing to work. I must casually have made the memorandum on this piece of paper.

Ques.—Did not in fact Padre Real derive a benefit from the sale to Alexander Forbes?

Ans.—I presume that what money was paid he received, although he told me he had been swindled.

Ques.—Do you remember having testified in the case of Charles Fossat on behalf of the U. S.?

Ans.—I do.

Ques.—At whose instance was that deposition given?

Ans.—I don't know whether at that of Mr. Crittenden or Mr. Laurencel.

Ques.—Was it before or after your agreement with Laurencel?

Ans.—After. But it was not conditioned or consequent upon that arrrangement. If I had not made any arrangement, I should still have given that testimony.

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DIRECT RESUMED.

Ques.—Why did you not go to Monterey to look for the document spoken of by Mr. Alexander Forbes in his letter to you?

Ans.—I thought it would be useless.

Ques.—Why?

Ans.—Because I did'nt think it was there.

Ques.—Why didn't you think it was there?

Ans.—I thought he might have been mistaken.

Ques.—In the letter 3d February, 1850, ("F. No. 11, O. H. No. 9,") the word "found" is underscored, and the words "very private," written on the top. Was that word underscored, and the words written on the top, when you received it?

Ans.—I believe they were.

Ques.—Do you know of any difficulty in adding those words after the press copy was taken?

Ans.—None, whatever.

JAS. ALEX. FORBES.

Subscribed before me, this 19th Dec., 1857.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Filed December 19th, 1857.

J. EDGAR GRYMES,
Deputy.

EXHIBITS TO DEPOSITION OF JAS. ALEX. FORBES.

O. H. No. 1.
Vide "F. No. 20—J. A. Monroe." Page 390

O. H. No. 2.
Vide "F. No. 21—J. A. Monroe." Page 391

O. H. No. 3.
Vide "F. No. 23—J. A. Monroe." Page 392

O. H. No. 4.
Vide "F. No. 22—J. A. Monroe." Page 393

O. H. No. 5.
Vide "F. No. 16—J. A. Monroe." Page 394

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O. H. No. 6.
Vide "F. No. 7—J. A. Monroe." Page 395

O. H. No. 7.
Vide "F. No. 9—J. A. Monroe." Page 396

O. H. No. 8.
Vide "F. No. 10—J. A. Monroe." Page 397

O. H. No. 9.
Vide "F. No. 11—J. A. Monroe." Page 400

O. H. No. 9.
Vide "F. No. 24—J. A. Monroe." Page 403

O. H. No. 10.
Vide "F. No. 12—J. A. Monroe." Page 404

O. H. No. 11.
Vide "F. No. 14—J. A. Monroe." Page 404

O. H. No. 12.
Vide "F. No. 13—J. A. Monroe." Page 405

O. H. No. 13.
Vide "F. No. 15—J. A. Monroe." Page 406

O. H. No. 14.
Vide "F. No. 15½—J. A. Monroe." Page 399

O. H. No. 15.
Vide "F. No. 17—J. A. Monroe." Page 407

O. H. No. 16.
Vide "F. No. 1—J. A. Monroe." Page 382

O. H. No. 17.
Vide "F. No. 2—J. A. Monroe." Page 382

O. H. No. 18.
Vide "F. No. 3—J. A. Monroe." Page 383

O. H. No. 19.
Vide "F. No. 4—J. A. Monroe." Page 384

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O. H. No. 20.
Vide "F. No. 6—J. A. Monroe." Page 386

O. H. No. 21.
Vide "F. No. 19—J. A. Monroe." Page 385

O. H. No. 22.
Vide "F. No. 8—J. A. Monroe." Page 388

O. H. No. 23.
Vide "F. No. 5—J. A. Monroe." Page 386

O. H. No. 24.
Vide "F. No. 25—J. A. Monroe." Page 387

O. H. No. 25.
Vide "F. No. 26—J. A. Monroe," facing Page 388
Being "pertenencias and lines of mine of New Almaden, Jan'y 20, 1848."

O. H. No. 26.
Vide "F. No. 27—J. A. Monroe." Page 408

O. H. No. 27.
Vide "F. No. 18—J. A. Monroe." Page 390

O. H. No. 28.
Vide "H. L. No. 3." Page 172

O. H. No. 28½.
Vide "H. L. No. 1." Page 151

O. H. No. 29.

DEED—JOSÉ CASTRO TO ALEX. FORBES.

Translation of "H. L. No. 1," page 151.

In the City of Tepic, on the first of March one thousand eight hundred and forty-seven before me the notary and witnesses, Don José Castro, dwelling transiently in this place, and whom I certify I know declared: that he is the lawful owner of four "varras" in a Silver mine

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with alloy of gold and quicksilver, situated in appurtenances of the Rancho of Don José Reyes Berreyesa, in the Jurisdiction of the Pueblo of San Jose of Guadalupe, of the Territory of Upper California in the second District of Monterey, as appears in the Archives of that place, from whence was extracted, an extra-judicial copy of the contract of that company, which document exhibits itself properly certified herewith, and which certifying of said instrument says to the letter as follows:

Deed of Partnership. Articles of Copartnership which the Señor Don Andres Castillero, Captain of permanent cavalry, enters into with the Commanding General, Don Jose Castro, the Messers. Secundino Robles, Theodore Robles, and a voluntary cession, which the partners have made forever, to the Rev. Father Friar Jose Maria del Refugio Suares del Real, in a Silver mine, with alloy of gold and quicksilver, in the Rancho of José Reyes Berreyesa, in the Jurisdiction of the Pueblo of San Jose of Guadalupe.

Article first.—The Señor Don Andres Castillero conforming altogether, with the mining ordinance, creates a genuine company forever, with the aforesaid gentlemen, in this form. The half of the mine, which is what he can dispose of, shall be divided into three shares, in this way. Four "varras" to the Señor Commanding General. Four varras to the Messrs. Secundino and Theodore Robles, and the other Four, to the Reverend Father Friar Jose Maria del Refugio Suares del Real, as a perpetual Donation.

Article Second.—None of the partners shall be able to sell or alienate, any of their shares, so that he who should verify said alienation, shall lose his right, the same accruing to the remaining partners.

Article Third.—The expenses shall be borne in proportion to the shares, keeping a just account of the same.

Article fourth.—In strict conformity with the mining ordinance, whatever difficulty may arise, shall be settled by the partners.

Article fifth.—Don Andres Castillero, shall direct the operations, expenses, and works of the mine, and in default of him Father Friar José Maria Del Refugio Suares del Real.

Article sixth.—There shall not be extracted of the products, a greater quantity than what is needed for the arrangement of the business, until the operations are settled, and whatever quantity that is extracted, has to be with the consent of all the partners, until the final arrangement of the business.

Article seventh.—This contract shall be ratified in the presence of the Prefect of the Second District, Don Manuel Castro, depositing the original document in the Archive of that place, and giving a certified copy thereof for security to those interested.

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Mission of Santa Clara, second of November, one thousand eight hundred and forty-five.

ANDRES CASTILLERO.

For the Commanding General, Don Jose Castro.

ANDRES CASTILLERO.

FRIAR JOSE MARIA DEL REFUGIO SUARES DEL REAL.

For Secundino and Theodore Robles.

FRANCISCO ARSE.

This is a true copy of the original, and to which I advert. Mission of Santa Clara, December eighth, one thousand eight hundred and forty-five.

MANUEL CASTRO.
ANTONIO MARIA PICO.

This is a copy. Mexico, December fifth, one thousand eight hundred and forty-six.

ANDRES CASTILLERO.

The Sale follows. That by the foregoing and as a shareholder in that mine, of the varras which belong to him, and that manner and form, which is according to law, he stipulates: for himself, and in the name of his heirs and successors, or of any right that should be claimed under them, he hereby sells and alienates forever to the Señor Don Alejandro Forbes of this vicinity, and he agrees for himself and his representatives, to sell one varra of those which belong to him, in the mine before referred to, and which is known by the name of Santa Clara. That he transfers to the purchaser, the direct and absolute possession of the aforesaid varra, with all the uses, profits and appurtenances, with all and every other right, to the same belonging and appertaining, inasmuch all of which, he cedes and transfers to the aforesaid Mr. Forbes, and the subscriber declares, that the varra which he alienates, is free from all incumbrance, implied or expressed, as he thus warrants the same, and that the sale is for the sum of eight hundred Dollars, which he acknowledges to have received to his entire satisfaction, and as this amount does not appear presently, he renounces the benefit of Law 9, title 1st, section 5th, and the two years which are allowed for proof of the receipt thereof, which he grants as if they were passed, covenanting from now, the most firm and efficient warranty, that may conduce to the security of purchaser.

He likewise affirms, that sum of Eight hundred Dollars, in which he sells that varra, is the value of the same, and that notwithstanding it should be worth more, of the overplus, whatever the sum, be it small

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or great, he grants and donates the same to the purchaser and his representatives according to Law, and he renounces the Law 2, title 1st, Book 10 of the latest Digest, and his benefit of the four years in which to ask the recision of this contract, or the completion of the just value of the thing sold: which term he grants, as if the same were passed. In consequence whereof, he dispossesses himself, abandons and parts with whatever right, which he may have had, and could have, to the aforesaid varra, so that as belonging to the purchaser, and acquired with the legitimate title, he may direct the share which belongs to him, and he may take possession thereof, Judicially or extra-judicially by virtue of this instrument. Likewise the subscriber hereto warrants the security and guaranty of this sale, also that he will never use as an impediment to it, the second Article of the Partnership contract, which is heretofore herein inserted, and he covenants, that his partners, shall ratify and consent to this sale, as the subscriber hereto has ratified and consented, and as they also have heretofore done, and to this effect he ratifies the security and guaranty that offers.

Acceptation. And Mr. Alexander Forbes being present, whom I certify I know, and acquainted with the contents of this instrument, declared: that for himself and for his representatives, he accepts the sale which is made to him, under the guaranty hereby offered, and he remains bound as a shareholder of the mine, in the varra that is sold to him, to comply with the rest of the partners, in that which is required of him, by the ordinance pertaining thereto. And for the fulfilment of the foregoing, the subscribers hereto, pledge their property in possession and in expectancy, with submission and renunciation of the laws and privileges that may be in their favor and defence, and acknowledge themselves as strictly bound, as if it were by sentence passed, in authority of a final judgment.

And they signed, being witnesses Don Ignacio Mariscal, Don Santos Gallegos, and Don Francisco de los Rios, who I certify were present.

JOSE CASTRO.
ALEJANDRO FORBES.
JESUS VEGAR.

Second Indenture. In the City of Tepic, on the twelfth of April, one thousand eight hundred and forty seven, before me the Notary and witnesses, Don Jose Castro a resident in this place, and whom I certify I know, declared; that he is the legal owner of four varras in a silver mine with alloy of gold and quicksilver, situated in appurtenances of the Rancho of Don Jose Reyes Berreyesa, in the Jurisdiction of the Pueblo of San Jose of Guadalupe, in the Territory of Upper Cali-

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fornia, in the Second District of Monterey, as appeared in the Archives of that place, from which is taken an extrajudicial copy of the agreement of that company, which document presents itself properly certified herewith, and which certifying of said instrument, says to the letter, as follows:

Deed of Partnership. Articles of Copartnership, which the Señor Don Andres Castillero, Capitan, of permanent cavalry, enters into, with the Commanding General, Don Jose Castro, the Messrs Secundino Robles, and Theodore Robles, and a voluntary cession, which the partners have made forever, to the Rev. Father, Friar Jose Maria del Refugio Suares del Real, in a Silver mine, with alloy, of gold and quicksilver, in the Rancho of Don Jose Reyes Berreyesa, in the Jurisdiction of the Pueblo of San José of Guadalupe.

Article First.—The Señor Don Andres Castillero, in strict conformity with the mining ordinance, creates a genuine company, perpetually, with the aforesaid, Gentlemen, in this form. The half of the mine, which is that of which he can dispose, shall be divided into three shares, in this form. Four varras to the Señor Commanding General, Four varras to the Messrs. Secundino and Theodore Robles, and the other four, to the Reverend Father, Friar Jose Maria del Refugio Suares del Real, as a perpetual Donation.

Article Second.—None of the partners shall be able to sell or alienate any of their shares, so that he who should verify said alienation, shall lose his right, the same accruing to the remaining partners.

Article Third.—The expenses shall be born in proportion to the shares, keeping a just account of the same.

Artible Fourth.—In strict conformity with the provisions of the mining ordinance, whatever difficulty may arise, shall be settled by the partners.

Article Fifth.—Don Andres Castillero shall direct the operations, expenses, and works of the mine, and in default of him the Rev. Father, Friar Jose Maria del Refugio Suares del Real.

Article Sixth.—There shall not be extracted, of the products, a greater quantity than what is needed for the arrangement of the business, until the operations are arranged, and whatever quantity is taken out, has to be with consent of all the partners, until the final arrangement of the business.

Article Seventh.—This contract shall be ratified before the Prefect of the Second District, Don Manuel Castro, depositing the original document in the Archive of that place, and giving a certified copy of the same, for the security of the parties interested.

Mission of Santa Clara, second of November, one thousand eight hundred and forty five.

ANDRES CASTILLERO.

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For the Commanding General, Don Jose Castro,
ANDRES CASTILLERO.
FRIAR JOSE MARIA DEL REFUGIO SUARES DEL REAL.

For Secundino and Theodore Robles,
FRANCISCO ARSE.

This is a true copy of the original, and to which I advert.
Mission of Santa Clara, December the eighth, one thousand eight hundred and forty five.
MANUEL CASTRO.
ANTONIO MARIA PICO.

This is a copy.
Mexico December fifth, one thousand eight hundred and forty six.
ANDRES CASTILLERO.

That in consequence of the foregoing, the affiant proves, that in that mine he has had an interest of four varras, and he now declares that he has heretofore sold one to the Señor Don Alejandro Forbes, by Deed, which he executed to him the first of March, of this year, before this authority, (as is certified to be contained in the Record.) That remaining, inasmuch, the owner of three varras, at a time it agrees with his interests to sell another of them, Now therefore, in that manner and form, most in accordance with law, he stipulates, that for himself, and in the name of his heirs and successors, or of any right claimed under them, he sells, bargains and alienates forever, to the same Señor Don Alejandro Forbes, of this vicinity and commerce, for him and his representatives, one varra, of the three, that as yet belong to this subscriber, in the mine before referred to, and which is known by the name of Santa Clara. That he transfers to the purchaser, the direct and absolute possession of the aforesaid varra, with all the uses, profits and appurtenances, with all and every other right, to the same belonging and appertaining, inasmuch, all of which, he cedes and transfers to the aforesaid Mr. Forbes. And the vendor declares that the varra which he alienates, is free from all incumbrance, implied or expressed, as he thus warrants the same, and that the sale is made, for the sum of one thousand dollars, which he acknowledges to have received, to his entire satisfaction, and as this amount does not appear presently, he renounces law 9, title 1st, section 5th, and the two years which are allowed, for the proof of the receipt of the same, which he grants as if they were passed, covenanting from now the most firm and efficient guaranty, that may conduce to the security of the purchaser. He likewise affirms that the sum of one thousand Dollars, in which he

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sells that varra, is the value of the same, and that notwithstanding, it should be worth more, of the overplus whatever, be the sum small or great, he grants and donates the same to the purchaser, and his representatives according to law, and he renounces, Law 2, Title 1st, Book 10, of the latest Digest, and his benefit of the four years, in which to ask the recision of this contract, or the completion of the just value of the thing sold, which term he grants, as if the same were passed.

In consequence whereof, he dispossesses himself, abandons, and quit claims, whatever right which he may have had, and could have to the aforesaid varra, so that as belonging to the purchaser, and acquired with legitimate title, he may direct the share, which belongs to him, and may take possession thereof either Judicially or Extra-judicially, by virtue of this instrument.

Likewise the subscriber hereto warrants the security and guaranty of this sale, also, that it shall never serve as an impediment thereto, the second clause of the Articles of Copartnership, and which is heretofore herein inserted, inasmuch as he covenants that his partners shall ratify and consent to this sale, as he, the subscriber hereto, has already heretofore done, by virtue of the sales made by his partners. And to this effect, he ratifies the security, and guaranty that he offers.

Acceptation. And Mr. Alexander Forbes being present, whom I certify I know, and being acquainted with the contents of this document, declared: that for himself, and for his representatives, he accepts the sale which is made to him, under the warranty, which is offered, and he remains bound, as a shareholder of the mine, in the varra which is sold to him, to comply with the rest of the partners, in that which is required of him by the ordinance relating thereto. And for the fulfillment of the foregoing, the subscribers hereto, pledge their property, in possession or expectancy, with submission and renunciation, of the laws and privileges, that may be in their favor and defence, and acdnowledge themselves as strictly bound, as if it were, by sentence passed, in authority of a final judgment, and they signed, being witnesses, Don Ignacio Mariscal, Don Santos Gallegos, and Don Ramon Ponse, who I certify were present.

JOSE CASTRO.
ALEXANDER FORBES.
JESUS VEGAR.

2d Document. In the City of Tepic, on the 16th of April, one thousand eight hundred and forty seven, before me the Notary and witnesses, the Señor Don Jose Castro, a resident of this place and whom I certify I know, declared: that he has been the lawful owner of four

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varras in a silver mine, with alloy of gold and Quicksilver, situated in appurtenances of the Pueblo of San José of Guadalupe, of the Territory of Upper California, in the Second District of Monterey, as appears in the archives of that place, and from whence was extracted an extra-judicial copy of the contract of that company, which document, exhibits itself properly certified to herewith, and which certifying of such instrument, says to the letter, that which follows:

Deed of Partnership. Articles of Copartnership which the Señor Don Andres Castillero, Captain of permanent cavalry, enters into, with the Señor Commanding General, Don Jose Castro, the Messrs. Secundino Robles, Theodore Robles, and a voluntary cession, which the partners have made forever, to the Reverend Father, Friar Jose Maria del Refugio Suares del Real, in a Silver mine, with alloy of gold and Quicksilver, in the Rancho of Don José Reyes Berreyesa, in the Jurisdiction of the Pueblo of San Jose of Guadalupe.

Article First.—The Señor Don Andres Castillero, conforming strictly to the mining ordinance, creates a genuine company, forever, with the aforesaid Gentlemen, in this form. The half of the mine, which what he can dispose of, shall be divided into three shares, in this form. Four varras to the Commanding General. Four varras to the Messrs. Secundino and Theodore Robles, and the other four, to the Reverend Father, Friar Jose Maria del Refugio Suares del Real, as a perpetual Donation.

Article Second.—None of the partners, shall be able to sell or alienate any of these shares, so that he who should verify said alienation, shall lose his right, the same accruing to the remaining partners.

Article Third.—The expenses shall be borne in proportion to the shares, keeping a just account of the same.

Article Fourth.—In conformity with the provisions of the mining ordinance, whatever difficulty may arise, shall be settled by the partners.

Article Fifth.—Don Andres Castillero shall direct the operations, expenses, and works of the mines, and in default of him, the Rev. Father, Friar Jose Maria del Refugio Suares del Real.

Article Sixth.—There shall not be extracted of the products a greater quantity than what is needed, for the arrangement of the business, until the operations are arranged, and whatever quantity that is extracted, has to be with the consent of all the partners, until the final arrangement of the business.

Article Seventh.—This contract shall be ratified in the presence of the Prefect of the Second District, Don Manuel Castro, depositing the original document in the Archive of that place, and giving a certified copy thereof, for security, to the parties interested.

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Mission of Santa Clara, second of November, one thousand eight hundred and forty five.

ANDRES CASTILLERO.

For the Commanding General,

ANDRES CASTILLERO.
FRIAR JOSE MARIA DEL REFUGIO SUARES DEL REAL.

For Secundino and Theodore Robles,

FRANCISCO ARSE.

This is a true copy of the original, and to which I advert.

Mission of Santa Clara, December the eighth, one thousand eight hundred and forty five.

MANUEL CASTRO.
ANTONIO MARIA PICO.

This is a copy.

Mexico, December the fifth, one thousand eight hundred and forty six.

ANDRES CASTILLERO.

The Deed follows. That by the foregoing, this affiant proves, that in that mine he has had an interest of four varras, and he now declares that of them he has heretofore sold two, to Mr. Alexander Forbes, by Deeds which he executed to him, the first of March of this year, and the twelfth of the present month, before this authority, (as is certified to be contained in the Record,) that inasmuch, remaining still the owner of two varras, at a time it agrees to his interests, to sell another of them, therefore, in that manner and form, which is most favorable to his right, he stipulates, that for himself, and in the name of his heirs and successors, or of any right claimed under them, he sells and alienates forever, to the same Mr. Alexander Forbes, of this vicinity and commerce, for himself and his representatives, one varra of the two that as yet belong to the subscriber hereto, in the mine heretofore referred to, and which is known by the name of Santa Clara. That he transfers to the purchaser the direct and absolute possession of the aforesaid varra, with all the uses, profits, and appurtenances, with all every other right, to the same belonging and appertaining; inasmuch, all of which he cedes and transfers to the aforesaid Mr. Forbes, and the subscriber hereto declares, that the varra which he alienates is free from all incumbrance, implied or expressed, as he thus warrants the same, and that the sale is made in the sum of one thousand dollars, which he confesses to have received, to his entire satisfaction, and as this amount does not appear presently, he renounces, Law 9, title 1st,

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Section 5th, and the two years which are allowed for the proof of the receipt of the same, which he grants as if they were past. Covenanting from now, the most firm and efficient guaranty that may conduce to the security of the purchaser; he likewise affirms that the sum of one thousand dollars, in which he sells that varra, is the value of the same, and that notwithstanding it should be worth more, of the overplus whatever be the sum, small or great, he grants and donates the same to the purchaser, and his representatives according to law, and he renounces law 2, Title 1st, Book 10, of the Latest Digest, and his benefit of the four years in which to ask the recision of this contract, or the completion of the just value of the thing sold, which term he grants, as if the same were past.

In consequence whereof, he dispossesses himself of, abandons and quit claims whatever right that he may have had, and could have to the aforesaid varra, so that as belonging to the purchaser, and acquired with legitimate title, he may direct the shares which belongs to him, and he may take possession thereof, either Judicially or extra-judicially, in virtue of this Instrument. Likewise the subscriber hereto warrants the security and validity of this sale, so that, it shall never serve as an impediment to the same, the second clause of the Articles of Partnership, which is hereinbefore inserted, inasmuch as he covenants, that his partners shall ratify and consent to this sale, as the subscriber hereto, has already heretofore done, and as his partners have likewise, and to this effect he ratifies the security and guaranty that he offers.

Acceptation. And Mr. Alexander Forbes being present, whom I certify I know, and acquainted with the contents of this Instrument, declared, that for himself and for his representatives, he accepts the sale, that is made to him under the surety which is offered him, and he remains bound as a shareholder of the mine, in the varra that is sold to him, to comply with the other partners, in that which is required of him, by the ordinance pertaining thereto.

And for the fulfilment of the foregoing, the subscribers hereto pledge their property, in possession or expectancy, with submission to and renunciation of, the laws and privileges, that may be in their favour and defence, and acknowledge themselves as strictly bound, as if it were by sentence passed, in anthority of a final Judgment, and they signed, being witnesses hereto Don Ignacio Mariscal, Don Santos Gallegos, and Don Ramon Panse, who I certify were present.

JOSE CASTRO,
ALEXANDER FORBES,
JESUS VIJAR.

4th Document. In the City of Tepic, on the tenth of March, one thousand eight hundred and forty-seven, before me, the Notary, and witnesses, the Señor Don José Castro, a resident in this place, and in his

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proper person, which I certify I know, declared, that he was the legal owner of four varras or shares in a silver mine, with alloy of gold and quicksilver, situated in appurtenances of the Rancho of Don José Reyes Berreyesa, in the jurisdiction of the Pueblo of San José of Guadalupe, of the Territory of Upper California, in the Second District of Monterey, as appears in the archives of that place, and from whence was extracted an extrajudicial copy of the contract of that Company, which document exhibits itself, properly certified herewith, the same being seen in other contracts, and which certifying thereto, says to the letter, as follows:

Indenture of Partnership. Articles of Capartnership which the Señor Don Andres Castillero, Captain of permanent cavalry, enters into with the Commanding General, Don José Castro, the Messrs. Secundino Robles, Theodore Robles, and a voluntary cession, which the partners have made, forever, to the Rev. Father, Friar José Maria del Refugio Suares del Real, in a silver mine, with alloy of gold and quicksilver, in the Rancho of Don José Reyes Berreyesa, in the jurisdiction of the Pueblo de San Jose, of Guadalupe.

Article First.—The Señor Don Andres Castillero, conforming strictly to the mining ordinance, creates a genuine company forever, with the aforesaid gentlemen, in this form: The half of the mine, which is what he can dispose of, shall be divided into three shares in this form: Four varras to the Señor Commanding General, Four varras to the Messrs. Secundino and Theodore Robles, and the other four, to the Rev. Father, Friar José Maria del Refugio Suares del Real, as a perpetual gift.

Article Second.—None of the partners shall be able to sell, or alienate any of their shares, so that he who should verify said alienation, shall lose his right, the same accruing to the remaining partners.

Article Third.—The expenses shall be borne in proportion to the shares, keeping a just account of the same.

Article Fourth.—In strict conformity with the provisions of the mining ordinance, whatever difficulty may arise, shall be settled by the partners.

Article Fifth.—Don Andres Castillero shall direct the operations, expenses, and works of the mine, and in default of him the Rev. Father Friar José Maria del Refugio Suares del Real.

Article Sixth.—There shall not be extracted of the products a greater quantity than what is needed for the arrangement of the business, until the operations are arranged, and whatever quantity that is extracted, has to be with consent of all the partners, until the final arrangement of the business.

Article Seventh.—This contract shall be ratified in the presence of the Prefect of the Second District, Don Manuel Castro, depositing the

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original document in the archive of that place, and giving a certified copy of the same, for its security to the parties interested.

Mission of Santa Clara, second of November, one thousand eight hundred and forty-five.

ANDRES CASTILLERO.

For the Commanding General, Don José Castro.

ANDRES CASTILLERO.

FRIAR JOSE MARIA DEL REFUGIO SUARES DEL REAL.

For Secundino and Theodore Robles.

FRANCISCO ARSE.

This is a true copy of the original, and to which I advert.

Mission of Santa Clara, December eighth, one thousand eight hundred and forty-five.

MANUEL CASTRO.
ANTONIO MARIA PICO.

This is a copy.

Mexico, December fifth, one thousand eight hundred and forty-six.

ANDRES CASTILLERO.

The Sale follows. That by the foregoing, and as a shareholder in that mine of the four varras, which belonged to him, the same Don José Castro goes on to say, that of the said four varras, he has heretofore sold three, to Mr. Alexander Forbes of this vicinity, as is evidenced by the Deeds of sale, which he has executed, before this authority, the first of March, twelfth, and sixteenth of April, of this year, which deeds, he ratifies anew, as legal sales which he has made, and seeing by them, that to the affiant hereto, there only remains one varra, in that mine now, and it convening to his interests, he bargains to alienate the same, remaining altogether divested of the share which belonged to him in the aforesaid mine; Therefore in that manner and form, that may be most secure, the aforesaid Señor Castro stipulates: for himself, and in the name of his heirs and successors, or of any right claimed under them, whatever, and he sells and alienates forever, to the same Don Alexander Forbes, of this vicinity and commerce, for him and his representatives, that varra, which has as yet belonged to the subscriber hereto in the aforementioned mine, which is known by the name of Santa Clara, and which as the sole property, which in it, there remained to him, that he transfers to the purchaser the direct and absolute possession of the aforesaid varra, with all the uses, profits and appurtenances, with all and every other right, to the same belonging and appertaining, inasmuch all of which he cedes and transfers to the above mentioned Mr. Forbes. And the subscriber declares, that this last varra which he alienates, is free from all incumbrance, implied or ex-

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pressed, as he thus warrants the same, and that the sale is made for the sum of one thousand dollars, which he acknowledges to have received to his satisfaction, and as this amount does not appear presently, he renounces Law 9, Title 1st, part 5th, and the two years which are allowed for the proof of the receipt of the same, which he grants, as if they were passed, and he executes to the purchaser, the most efficient guaranty, that may conduce to his security.

He likewise affirms that the sum of one thousand dollars, in which he sells that varra, is the value of the same, and that notwithstanding it should be worth more, of the overplus whatever be the sum, small or great, he grants and denates the same to the purchaser, and his representatives according to law, and he renounces Law 2, Title 1st, Book 10, of the latest Digest, and his benefit of the four years in which to ask the recision of the contract, or the completion of the just value thereof, which term he grants as if the same was past.

In consequence whereof, he dispossesses himself, abandons, quitclaims and parts with whatever right which he may have had, and could have, to the aforementioned varra, and total share in the mine; so that as belonging to the purchaser, and acquired with legitimate title, he may direct that share which belongs to him, and he may take possession thereof either Judicially or Extrajudicially, by virtue of this instrument. Likewise the subscriber hereto, warrants the security and guaranty of this sale, also that it shall never serve as an impediment to the same, the second clause of the Articles of Copartnership, which are heretofore herein inserted, and he covenants that his partners ratify and consent to this sale, as the subscriber hereto, has ratified and consented, and as they also have heretofore done, and to this effect, he ratifies the security and guaranty that he offers.

Acceptation. And Mr. Alexander Forbes being present, whom I certify I know, and acquainted with the contents of this document, declared, that for himself and for his representatives, he accepts the sale, which is made to him, under the guaranty, hereby offered, and he remains bound as a shareholder of the mine by the varra that is sold to him, to comply, with the other partners, in that which is required of him by the ordinance pertaining thereto. And for the fulfilment of the foregoing, the subscribers hereto pledge their property in possession or expectancy, with submission and renunciation of the laws and privileges that there may be in their favor and defence, and acknowledge themselves bound according to law, as if it were by sentence passed in authority of final judgment, so they executed and signed the same, being witnesses thereto, Don Ramon Panse, Don Francisco de los Rios and Don Santos Gallegos, who I certify were present.

JOSE CASTRO,
ALEXANDER FORBES.
JESUS VEGAR, Notary Public.

"The end hereof."

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This agrees with the originals, which are contained in, from the forty-sixth to the forty-ninth page, the first Document. The second, from the hundred and fifty-first to the hundred and fifty-fifth page; and the fourth, from the hundred and sixty-seventh ("167th") to the hundred and seventy-first page, all of the Book of Judicial Records for the last year, from whence the same was taken and corrected in these seventeen pages of sealed paper of the 1st and 4th class, the second time at request of the purchaser, Don Alexander Forbes.

In Testimony whereof, I sign and seal the same, in Tepic, on the seventeeth of August, one thousand eight hundred and forty-eight.

JESUS VEGAR.

Of the four varras mentioned in this instrument, two have been sold by the proprietor, to the Messrs. Barron, Forbes and Company, according to what passed before me, at this date, Tepic, April eleventh, one thousand eight hundred and forty-nine.

JESUS VEGAR.

We, the undersigned, 1st Constitutional Alcalde, and Notary Public, hereby certify that the foregoing signature is that which the Notary, Don Jesus Vegar, is accustomed to use, in all the acts, which pass before him. And as such we certify in Tepic, on the fifteenth day of March, one thousand eight hundred and fifty.

LORETO CORONA,
EUSEBIO FERNANDEZ.

O. H. No. 30.
Vide "H. L. No. 4." Page 173.

O. H. No. 31.
Vide "H. L. No. 5." Page 175.

O. H. No. 32.

TRANSLATION OF "H. L. No. 5."

In the Mission of Santa Clara, on the ninth day of the month of August, one thousand eight hundred and forty-nine, before me, George Bellamy, auxiliar Alcalde of the Jurisdiction of the Pueblo of San José of Guadalupe, and witnesses of assistance, there appeared the Reverend Father, Friar José Maria del Refugio Suares del Real,

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whom I certify I know, and he declared: that by virtue of an agreement of partnership, entered into between Andres Castillero, Don José Castro, Don Theodore and Don Secundino Robles, the second of November, one thousand eight hundred and forty five, there belongs and pertains to him in law, as a perpetual donation, four varras in a silver mine, with alloy of gold and quicksilver, situated, according as shewn in the Judicial papers of the Record, in appurtenances of the Rancho of Don José Reyes Berreyesa, in the same Juridiction; three of which four varras, the subscriber hereto, sold and alienated to Mr. Alexander Forbes by Indenture of sale, in the month of January, one thousand eight hundred and forty-eight. That now in his quality of shareholder in the said mine, in the manner aforesaid, and in the manner and form that may be most in conformity to law, he stipulates, that for himself, his heirs and successors, or by virtue of whatever right, condition or title that may be therein, he sells and alienates forever, to Mr. Robert Walkinshaw, a resident of this Jurisdiction, for himself and his representatives, the said one varra, that still pertains to him as a perpetual donation in the aforesaid mine, which in his title of record, is known by the name of that of Santa Clara, and at present by that of New Almaden. That he transfers to the said Mr. Robert Walkinshaw, the lawful right and title to the said varra, with all the uses, profits and appurtenances thereof, with the fruits and products which thereto belong and appertain, from and after the seventeenth of December, one thousand eight hundred and forty-six, with power to reclaim the same from the possession of any person living, with all and every other right which to the same may belong and appertain, inasmuch as he cedes and transfers the whole thereof to the aforesaid Mr. Walkinshaw.

And the subscriber declares, that the varra which he alienates, is free from all incumbrance, general and particular, implied and expressed, as he thus warrants the same, and the sale thereof, and the fruits and products as above mentioned, is made for the sum of five thousand dollars in current money, which he confesses to have received, to his entire satisfaction. That he expressly renounces the benefit of the law 9, tile 1st, part 5th, and likewise the 2nd law, title 1st, Book 10 of the Latest Digest, as also of whatever other law that favors his right, to ask proof of the receipt of the value, or in reversion of this contract, under the protest herein.

In consequence whereof, he dispossesses himself of, abandons and quit-claims whatever right which he may have had, and could have to the aforesaid varra, so that as belonging to the purchaser, and acquired with legitimate title, he may direct the share, which belongs to him, and he may take possession thereof, Judicially or Extrajudicially, by virtue of this instrument.

Likewise the subscriber hereto warrants the security and validity of this sale, as also that the second article of the said agreement o

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partnership shall never serve as an obstacle to the same, and Mr. Robert Walkinshaw being present, whom I certify I know, and acquainted with the contents of this instrument, declared, that for himself and his representatives, he accepts the sale that is made to him, under guaranty, that is offered, and he remains bound, as a shareholder of the said mine, in the varra that is sold to him, to comply with the rest of the partners, in conformity with the laws; and for the fulfilment of the foregoing, the subscribers hereto pledge their property, either in possession or expectancy, with submission to, and renunciation of the laws and privileges that there may be in their favor and defence, and acknowledge themselves bound, as if it were by sentence passed by virtue of a final judgment, and they signed hereto, being witnesses, Don Jesus Herrera, and Don Francisco Arse.

FR. J. M. DEL R. S. DEL REAL.
ROBERT WALKINSHAW.

GEO. W. BELLAMY,
Alcalde.

Of Assistance:
JESUS HERRERA.

Of Assistance:
FRANCO ARSE.

O. H. No. 33.
Vide "H. L. No. 2." Page 149.

O. H. No. 34.

TRANSLATION OF "H. L. No. 2."

In the Town of San José of Guadalupe, on the twenty-seventh day of the month of December, of the year one thousand eight hundred and forty-seven, acting by acceptance, for want of a Notary Public, before me, James W. Weekes, Constitutional Judge, and witnesses of assistance, there appeared the Very Reverend Father, Friar José Maria del Refugio Suares del Real, attorney in fact of Don Andres Castillero, Captain of Permanent Cavalry, resident in the City of Mexico, which person, (the said Reverend Father,) I certify I know, and he declared: that having legitimate power, which he exhibited, from said Castillero, to enable him to sell three varras of the silver mine, with alloy of gold and quicksilver, situated in the Rancho of Don José Reyes Berreyesa, in the Jurisdiction of the Pueblo of San Jose Guadalupe, in the Territory of Upper California, in the Second District of Monterey; that by such power, by these presents, and in the most solemn form that there may be in law, he stipulates,

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for him, and in the name of his heirs and successors, and those whose rights he hereby represents, that he sells in actual sale, and perpetual alienation, to Mr. Alexander Forbes, Consul of Her Britannic Majesty, and now a resident at the works of the aforesaid mine, and in the Jurisdiction of this said Pueblo of San José Guadalupe, to him, his heirs, and those whose rights are represented, "To wit": Three varras, of the ten, of which he is the lawful owner, in the aforesaid mine of Santa Clara, which this grantor possessed as discoverer thereof, and with such facility, he transfers to the purchaser, the aforesaid three varras, with all the uses, profits and appurtenances, with all and every other right, to the same belonging and appertaining; inasmuch all of which, he cedes, renounces and transfers to the aforementioned Mr. Forbes, and those whose rights he represents. He declares that the aforesaid three varras are free from all incumbrance, either as a tax or mortgage, especial or general, and as such, he warrants the same, for the price and sum of four thousand five hundred dollars, which he confesses to have received, in silver money, as is usual and current, of the Mexican currency, to his entire satisfaction, by reason whereof, he renounces the exception of the pecuniary non-remuneration law nine, title first, part fifth, with the four years which are conceded for the proofs thereof, which he grants as passed; stipulating by these presents, the most firm and efficient guarantee, that may conduce to the security of the purchaser.

He likewise declares, that the just and legitimate price of the aforesaid three varras, is four thousand five hundred dollars, which he confesses to have received, inasmuch as they are not worth more, nor has there been any person who offers as much; but if the value of the same was more, or in time to come the increase should be excessive, he grants and donates the whole, free, unencumbered and complete and irrevocable, with allusion and revocation of law two, title first, book 10 of the Latest Digest, which treats of the contracts, in which there is a damage, in more or less of the half of the just price, fixing four years in which to ask the reason thereof, or completion of the just value, which he grants as passed, and renounces with the aforesaid law. From now, forever, he dispossesses himself, quit-claims, and parts with, all interest, ownership, possession, and quasi possession, that he might have to the aforesaid three varras, and all of which he cedes, renounces and conveys, to the purchaser or his representatives, so that as owner, he may dispose of them, of his own free will, as his own property, acquired with just and legitimate title, and transfer of dominion, which is the present Document, taking, himself, or judicially, the possession or occupancy thereof, and constituting himself in the meantime as the tenant and uncertain possession, in legal form.

He also guarantees, the eviction, security and validity of this sale, so that the second article of the agreement of Partnership shall never

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serve as an impediment to the same, and which were suscbribed to, in the Mission of Santa Clara, on the second of November, one thousand eight hundred and forty-five, inasmuch he covenants that his partners shall ratify and consent to the same, as the subscriber hereto has done, and as they also have done in other instances; with the understanding, that if this be not possible, or the purchaser be involved in any suit, which be to his cost, and he be not left in the quiet and pacific possession thereof, the four thousand five hundred dollars shall be returned to him, which he confesses to have received as the fruits of the three varras, of which he is owner, and paying him all the damages, costs, and deteriorations, which may happen to him, without farther proof thereof than the simple oath of the party; and for the fulfilment of this obligation, he mortgages, express, especial and pointedly, the aforesaid three varras, which he shall not be able to sell, encumber, nor in any other manner alienate, without express consent of the purchaser, who on the contrary, shall be able to claim them even from third possessors, in order to cover himself, with whatever may be owed to him, in conformity with this indenture The costs of this Indenture shall be borne by both the contractors herein, by halves, and Don Alexander Forbes, Consul of Her Britannic Majesty, being present, which person, an adult in age, I certify I know, and acquainted with the contents of this instrument, declared, that for himself, and in legal form, he accepts the present, agreeing for this purpose verbally and in writing, firmly and willingly, and for himself, that he is satisfied with the present instrument, obligating himself to comply with what, in it, he has promised, and pertains to him.

And for the fulfilment of all the foregoing, the vendor pledges his person and effects, in possession or expectancy, and with them submits to the statute, and Jurisdiction of the Judges, who may or ought to try such causes according to law, so that for the same, they may constrain and bind them, as by a definitive sentence, given and passed by virtue of a final judgment; he renounces his immunities of residence and citizenship, with the general law, and that which prohibits its general renunciation, and before me, he stipulates, by his attorney in fact, with Mr. Alexander Forbes, being witnesses thereto, Don Antonio Suñol, Don José Noriega, and Don Dolores Pacheco, residents, who I certify were present. And at the signing hereof, the parties hereto added, that this sale, and all contained in this present document, shall not take effect, until Mr. Alexander Forbes is in the quiet and peaceable possion of the three varras sold, and if by any persons, or by whatever reason, he should be disturbed, then the mortgage shall have all its force, as intended, by the same, to the varras heretofore mentioned in the clause of security, in the present document, reproducing

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before the same witnesses the warranty for the fulfilment of this last condition, and they hereto signed, to which I certify.

(As Attorney in fact,)
FRIAR JOSE MARIA DEL REFUGIO SUARES DEL REAL.
(Signed.) ALEX. FORBES.
Of Assistance: Of Assistance:
JOSE NORIEGA. ANTONIO SUÑOL.
Of Assistance:
DOLORES PACHECO.
JAMES W. WEEKES,
Alcalde.

I certify that the foregoing document is a true copy, taken to the letter, from the original Indenture, to which I certify (dated as above.)
JAMES W. WEEKES,
Alcalde.

O. H. No. 35.

DUPLICATE.

Know all men by these presents, that I Alexander Forbes a British subject at present residing in the City of Tepic in the Republic of Mexico, in my own name and in the name of the Company established for the working of the Mine of New Almaden or Santa Clara in Upper California, have made constituted and appointed and by these presents do make constitue and appoint James Alex. Forbes of Santa Clara in California, my true and lawful Attorney for me and in my name and in the name and stead of the Company aforesaid, to demand and receive possession of the said Mine of New Almaden from whoever may be in the management or possession thereof, with all the ores, utensils, houses, and all and everything thereto appertaining hereby authorizing my said Attorney to direct and work the same for my account and for account of the foresaid Company in such manner as shall appear to my said Attorney to be for the interest of all concerned, and in conformity with the instructions to that effect given, and I hereby in my own name and in name of the Company aforesaid delegate to him my said Attorney my full and entire power and authority in the premises, to demand accounts, recover debts, receive all funds belonging to me or to the aforesaid Company, or to the said Mine, to demand the same at law or equity, to name and appoint managers and laborers, to remove the same, and to perform all such lawful acts deeds matters and things therein as may be requisite and

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necessary in as large full and ample a manner as I myself might or could do were I personally present, and acting therein in my own proper person, or as if my said Attorney was thereto more fully and especially authorized, with full and ample powers of substitution and revocation at his own will and pleasure, hereby engaging to ratify and confirm all and whatsoever my said Attorney or his substitute or substitutes, shall or may lawfully do, or cause to be done in the premises under or by virtue of these presents.

In testimony whereof I have set my hand and seal to these presents, this twenty-third day of April in the year of our Lord one thousand eight hundred and forty-nine.

ALEX. FORBES. { SEAL }

Joaquin Andrade, Witness.
Wm. E. Barron, Witness.

Los infrascritos Escribanos publicos, certificamos: que las anteriores firmas son propias de los Señores, D. Alejandro Forbes, D. Joaquin Andrade y D. Guillermo E. Barron, las mismas que usan entodos sus negocios. En cuya combrobacion, sentamos la presente en Tepic á diez y nueve de Mayo de mil ochocientos cuarenta y nueve.

† PANFILO SOLIS.

† JESUS VEJAR.

I hereby certify that the foregoing signatures are in the true handwriting of the subscribers, who hold the situations represented, and who are worthy of all faith and credit.

{ SEAL } Given under my hand and seal of office in the city of Tepic this 19th day of May 1849.

EUSTACE W. BARRON,
Consul.

Endorsed:
Filed for Record on 26th Sept. 1849.

Recorded same date on page 284 and 285 and book 5 Archives of San José.

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O. H. No. 36.
Vide "H. L. No. 7." Page 179

O. H. No. 37.
Vide "H. L. No. 8." Page 180

O. H. No. 38.
Vide "H. L. No. 9." Page 182

O. H. No. 39.
Vide "H. L. No. 10." Page 183

O. H. No. 40.
Vide "H. L. No. 11." Page 185

O. H. No. 41.
Vide "H. L. No. 12." Page 187

O. H. No. 42.
Vide "H. L. No. 13." Page 189

O. H. No. 43.

DEED—JAS. ALEX. FORBES TO WM. E. BARRON.

Know all men by these presents, that I, James Alex. Forbes, of the town and county of Santa Clara, State of California, in consideration of the sum of thirty thousand dollars to me in hand paid by William E. Barron, of the city and county of San Francisco, and State aforesaid, the receipt whereof I hereby acknowledge, have bargained, sold and quit-claimed, and by these presents do bargain, sell and quit-claim unto the said William E. Barron and to his heirs and assigns forever, all my right, title, interest, estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, of, in and to One Barra or one twenty-fourth share of the quicksilver mine of New Almaden, situate, lying and being in the said County and State, including all my right, title, interest, estate, claim and demand, both in law and in equity, as well in possession as in expectancy, to the tract of land granted by the President of Mexico, to Andres Castillero on the 20th day of May, A. D. 1846, described in the order or decree issued by the Minister of Foreign Relations on the 23d May, 1846, and

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directed to the Governor of California, being two leagues of land situate in the County and State aforesaid; the same one twenty-fourth share, being that which was heretofore conveyed by me, to the said William E. Barron, on the thirtieth day of March, 1855, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof, I have hereunto set my hand and seal the 29th day of May, A. D. eighteen hundred and fifty-five.
JAMES ALEX. FORBES. { SEAL }

Sealed and delivered in presence of E. S. BENSON.

STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On this twenty-ninth day of May, A. D., one thousand eight hundred and fifty-five, before me Edward S. Benson, a Notary Public in and for said County, personally appeared James Alex. Forbes, to me known to be the individual described in and who executed the annexed instrument, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

{ SEAL } In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

E. S. BENSON,
Notary Public.

Endorsed:
Filed for record (at request of S. Hamilton) at 9$\frac{30}{60}$ o'clock, A. M., June 8th, A. D., 1855.

S. E. CLARK, Recorder.
By F. LEWIS, Deputy.

Recorded in Book G of deeds on pages 523 and 524, (records of the County of Santa Clara.)

S. A. CLARK, Recorder.
By F. LEWIS, Deputy.

O. H. No. 44.
Vide "H. L. No. 15." Page 192

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O. H. No. 45.

DEED—YECKER, TORRE & CO., TO BARRON, FORBES & CO., AND BOLTON, BARRON & CO.

TRANSLATION OF "H. L. No. 15."

In the City of Mexico, on the seventh of December one thousand eight hundred and fifty-two, before me the National and Public Notary, of the number that are, and the witnesses which are named, there appeared the Messrs. Yecker, Torre & Co., of this commerce, of the first part, and of the second, Mr. Eustace Barron, in representation of his house of Barron, Forbes and Company of Tepic, whereby he guarantees firmly and willingly, (por la que presta caucion de grato et rato) and futhermore he offers, that this contract shall there be ratified, or else he will present within a month, power sufficient, in this capital, to effect the said ratification: those present, being residents of this capital, whom I certify I know, and they declared, that the Messrs. Yecker, Torre & Co., had in the mine and negotiation of quicksilver, called New Almaden, situated in the Mission of Santa Clara, in Upper California, three and a half supplying shares, of the twelve of this class, into which the property is divided, and four, and eleven fourteenths, which form the total of the shares supplied, the ownership to which appears by the respective contracts and deeds, and by the receipts for the payments which they have made, as also by the accounts of the articles supplied, and in consequence of their ownership, and title therein, they made, on the twenty seventh of November last passed, to Barron, Forbes & Co., the sale of the aforesaid shares, by the agreement which they hereby exhibit to me, and which is to the letter as follows:

Contract. Messrs. Yecker, Torre & Co. sell to Messrs. Barron, Forbes & Co., their four and eleven fourteenth parts ($4\frac{11}{14}$) of shares supplied, and the three and a half ($3\frac{1}{2}$) supplying shares in the mine of New Almaden in Upper California, and the dividends which to said shares belong, and likewise, their interest in the business house of Messrs. Bolton, Barron & Co., of San Francisco, California, for the sum of three hundred and eighty thousand dollars, payable in this capital in the following manner; one hundred and eighty thousand dollars, ($180,000) cash down, which shall be counterbalanced by an equal sum, which a little more or less now exists in the hands of the vendors belonging to the business of the aforesaid mine: one hundred thousand dollars in three months, ($100,000), and one hundred thousand dollars ($100,000) "in six months" from the date hereof. Yecker, Torre & Co., shall give an account to Barron, Forbes & Co., of all the quicksilver that has been consigned to them, either by placing at the disposition of the parties

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of the second part, the stock on hand, that may be in their possession, or that of their correspondents, or delivering the accounts of the quantities which they or their correspondents might have sold since the last account, which they have remitted to San Francisco, be the same in fine in reals for the sales on time now due. Messrs. Yecker, Torre & Co., remain during this sale exempt from guaranty in any case, and without responsibility whatever, for the past and in future, as well with respect to the house in San Francisco, and shall only contribute on their part to the expenses of the mine, until the thirtieth of September last past, in conformity with the account of supplies, which the Mess. Bolton, Barron & Co., have passed to them on the same date. In this contract, there is not included the other accounts which exist between the house in San Francisco, and the Messrs. Yecker, Torre & Co., who will satisfy the balance of the same, if it should be against them, or they shall receive it, should it result in their favor.

Yecker, Torre & Co., cede to Barron, Forbes & Co., at cost price and charges, ten thousand (10,000) Quicksilver flasks, which they have ordered from England, To which effect Messrs. Yecker, Torre & Co. will deliver in this place the invoices, which they have already in their possession, for five thousand (5000) flasks, and will give an order to their correspondents in London, to deliver the balance, as the same are being finished. On their part, Barron, Forbes & Co. will charge their correspondents to pay to Finlay, Hodgson & Co. of London, the price and other costs, relative to the said ten thousand flasks. For the security of the parties interested, there shall be executed a public Document, in the legal and accustomed forms, which document shall serve as legal title to the purchasers, and to the vendors, for document for the collection of the value of the sale. Whatever doubt or difference that might occur, in regard to the interpretation of the Articles of this contract, and of the Deed mentioned in the foregoing Article, or in the execution of what one or the other disposes, shall be decided by two arbitrators, one chosen by each party, and in case of disagreement, by a third arbitrator whom the aforesaid arbitrators shall elect.

Made in Duplicate, in Mexico, on the twenty-seventh of November, one thousand eight hundred and fifty-two.

For Barron, Forbes & Co.,
EUSTACE BARRON.

YECKER, TORRE & CO.

Additional Article.—For the better understanding, it is declared, that by the words of an Indenture, in the legal and accustomed forms,

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it is understood, that the houses sold are especially mortgaged for the security of the payment of their price, as it is also, for the punctual fulfilment of the obligations, which the vendors agree to, without prejudice to the general mortgage.

YECKER, TORRE & CO.

It follows that Messrs. Yecker, Torre & Co., in fulfilment of the pre-inserted contract, have to proceed to execute the Deed, as is contained therein, giving it effect, in that manner and form that is most in accordance with law, and that may be most firm and valid; the aforesaid Yecker, Torre & Co. stipulate, that in the terms, and under the conditions, which are heretofore agreed to, in the insertion of the aforementioned contract of the twenty-seventh of November last, they sell to Barron, Forbes & Co., for themselves, and their successors, and for those that from them may derive title or right, forever, and without any reserve, the three and a half supplying shares, and the four and eleven-fourteenth parts, of the shares supplied as aforesaid, as also they likewise sell the interest they had in the commercial house in San Francisco, in Upper California, established under the firm of Bolton, Barron & Co., with the capital of Sixty thousand Dollars, one-half of which was put in by the house of Yecker, Torre & Co., and that of Barron, Forbes & Co., and they likewise sell them, ten thousand Quicksilver flasks, all in the sum of three hundred and eighty thousand Dollars, and besides the costs and charges of the Quicksilver flasks, which sales comprehend all that which did and could belong to the interest of Yecker, Torre & Co. until the date of contract of the twenty-seventh of the month past; the vendors substituting the purchasers in their stead, and ceding to them in the terms aforesaid, their shares such as they possess them, without giving warranty, and without responsibility of any kind, for the past or for the future, as well with respect to the mine of N. Almaden, as with the house in San Francisco. That in consequence of the respective obligations, which by the aforesaid contracts they have mutually stipulated to, Mess. Yecker, Torre & Co. abandon, quitclaim, and renounce, any right, dominion, ownership and possession to the aforesaid shares, supplying and supplied, of N. Almaden, of the dominion, ownership, and possession to the interest in the business of San Francisco, and of that which they held by purchase of the Ten thousand Quicksilver flasks, and they transfer all the aforesaid rights to the Mess. Barron, Forbes & Co. unto them and their successors, with the full property and possession, and with all their rights, real, personal, profitable, mixed, direct, executive and others, that belong to them, to receive all that which they the aforesaid grantors receive from the said business and houses, if they would not have made this sale, inclusive of the right to the next dividend, which account is being rendered, the product

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of all the sales made, and to be made, of the Quicksilver extracted turned and to be turned to account, until the date of the contract, and of the profits made in the commercial house of Bolton, Barron & Co. up to the same date, and from thenceforth, there being comprehended in this cession and sale of interests, everything which might belong to the grantors, in the business, be the same, real, personal, or things in action. The aforesaid Yecker, Torre & Co. obligate themselves to render an account of all the quicksilver which they have received for sale, and to deliver to Mess. Barron, Forbes & Co. all the products of the sales, retaining one hundred and eighty thousand Dollars for the first instalment, in payment of the price of the sale, for which is contracted in this Indenture, and to place at their disposal, the documents of credits, proceeding from the sales made on time of said Quicksilver, which was consigned to them, and the Quicksilver still on hand, not sold, for which they declare to have drawn, and by timely orders. They obligate themselves, in fine, to deliver to Barron, Forbes & Co. the amount of the expenses of the business of N. Almaden, of the interest that belonged to them, to the thirteenth of September of this year, in conformity to the account, that up to this date the Mess. Bolton, Barron & Co. have passed to them. And Mr. Eustace Barron, in representation of Mess. Barron, Forbes & Co., accepts the sale and cession of the shares of New Almaden, that of the interest in the firm in California, and that of the ten thousand quicksilver flasks, in the terms and under the terms and under the conditions heretofore agreed to, and that for said house, he undertakes to make the payment of the three hundred and eighty thousand Dollars, in the terms and times referred to, and consents in that, Mess. Yecker, Torre & Co. remain exempt from the eviction and guaranty, for all the past and the future, concerning the partnership and business of New Almaden, and in the house of Bolton, Barron & Co. of San Francisco, without prejudice to the obligations of Mess. Yecker, Torre & Co., to liquidate and balance their private accounts, pending with the same house in San Francisco, and to pay the costs and charges of the Quicksilver flasks as is expressed in the contract, of the twenty-seventh of November last past, which payments they shall make, in this City, without fail, excuse, or delay whatever, and indispensably in good Silver Dollars of the present Mexican currency, and for the security of the foregoing and without the general obligation of property, being either derogatory or prejudicial to the special obligation, nor *vice versa*, inasmuch, Messrs. Yecker, Torre & Co. may use that which to them seems best. Mr. Barron mortgages, for his house of Barron, Forbes & Co., the varras and shares that he has bought in the said mine of Almaden, and other things that are expressed in the present Indenture, agreeing that this special mortgage furnishes all the legal means for the security of the vendors, with the condition, that

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he shall either present authority, in the term of a month, from the house of Barron, Forbes & Co., or he shall ratify this, the contract, which is herein contained. And for the observance, keeping and fulfilment of the pre-inserted, Mess. Yecker, Torre & Co. obligate themselves, with their effects, present and future, and Mr. Barron, with those of his firm, which he represents, in possession or in expectancy, and with them, they submit themselves to the power and jurisdiction of the Judges, who might or should have cognizance of their actions, according to law, so that they may compel and bind them to the same, as if it were by sentence agreed upon, and passed in authority of final judgment, and they renounce the laws of their favor and defence with the general privileges; so they executed and signed this, being witness, Don Crescencio Landgrave, Don Francisco Lara, and Don Antonio Ferriero, of this vicinity, to which I certify.

YECKER, TORRE & CO.
EUSTACE BARRON.

Ramon de la Cueva, Nacional and Public Notary.

A copy made on behalf of the vendors, after the execution thereof, and is written on seven leaves, the first leaf on first class stamp, and the rest on fourth class, of the biennial current year, which I certify is corrected.

RAMON DE LA CUEVA,
(National and Notary Public,) E. N. & P.

We, the undersigned Notaries, hereby certify and affirm, that Don Ramon de la Cueva is a National and Public Notary of the number which there are in this capital, and that the Seal and Signature with which he authorizes the foregoing testimony are his, and moreover, that the same are entitled to full faith and credit, in law or otherwise.

In testimony whereof, we hereunto sign, and affix the Seal of our National College, in the City of Mexico, on the eleventh of December, one thousand, eight hundred and fifty-two.

{ Seal }

MANUEL DE MUDARIOMA.
CRESENT LANDGRAVE.
FERMIN VILLA.

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[O. H. No. 46.]

DEED—FROM CASTILLERO TO BILLINGS.

This indenture, made the second day of October, in the year of our Lord one thousand eight hundred and fifty-six:

Between Andres Castillero, formerly of Upper California, and now a resident of the State of Mexico, in the Republic of Mexico, party of the first part, and Frederick Billings of San Francisco, in the State of California, and United States of America, party of the second part, witnesseth,

That the said party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged and other good and valuable considerations him moving thereto, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said party of the second part and to his heirs and assigns for ever, all that tract of land and mine called the land and mine of New Almaden, (formerly called "Santa Clara,") lying and situate in the county of Santa Clara, in the State of California, being the mining right acquired by denouncement and registry of discovery, and by the possession and grant of the same, and of three thousand varas of land measured in every direction from the mouth of the mine, given and made by Antonio Maria Pico, First Alcalde, to the party of the first part, on the thirtieth day of December in the year of our Lord one thousand eight hundred and forty-five, and subsequently approved and confirmed by the Junta de Mineria, and the President of Mexico, and the tract of two square leagues of land in a square form the opposite sides of which lie north, south, east and west, respectively, in the middle of which is situated the mouth of the said mine, being the same land granted to the party of the first part by the President of Mexico, on the twentieth of May in the year of our Lord one thousand eight hundred and forty six, the title, with order of possession of which, was issued by the Minister of Relations on the twenty-third of May, in the year of our Lord one thousand eight hundred and forty-six, and signed by Castillo Lanzas, minister of said department: together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances:

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To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his assigns for ever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of

EUSTACE H. BARRON.
SAML. L. DENISON.

ANDRES CASTILLERO. { SEAL }

No. 207.

CONSULATE OF THE UNITED STATES OF AMERICA, FOR THE CITY OF MEXICO. } ss.

On this second day of October, in the year of our Lord one thousand eight hundred and fifty-six, before me, John Black, United States Consul for the City of Mexico, personally appeared Andres Castillero, known to me to be the individual described in and who executed the foregoing conveyance, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand, and affixed my official seal, in the City of Mexico aforesaid, the day and year first above written.

Register H. folio 182.

{ SEAL }

JOHN BLACK,
U. S. Consul.

Fees $2 00.

O. H. No. 47.

FREDERICK BILLINGS TO WILLIAM E. BARRON.

This Indenture made the eighteenth day of November in the year of Our Lord one thousand eight hundred and fifty-six, between Frederick Billings of the City of San Francisco in the State of California, party of the first part, and William E. Barron of said City of Francisco, party of the second part:

Witnesseth, that, whereas Andres Castillero, formerly of Upper California, and now of the Republic of Mexico, became the owner of the Quicksilver Mine of New Almaden (formerly called " Santa Cla-

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ra") lying and situate in the County of Santa Clara, by denouncement and registry of discovery, and by receiving the juridical possession and grant of the same, and of three thousand varas of land measured in every direction from the mouth of said mine, given and made by Antonio Maria Pico, First Alcalde, to the said Andres Castillero on the thirtieth day of December in the year of Our Lord one thousand eight hundred and forty-five: and Whereas the President of Mexico, on the twentieth day of May in the year of Our Lord one thousand eight hundred and forty-six, granted to said Andres Castillero for the use of said mine the tract of two square leagues of land in a square form, the opposite sides of which lie North, South, East and West respectively, in the middle of which is situated the mouth of said mine, the document of title and order of possession of which said land was issued to said Castillero by Castillo Lanzas, Minister of Relations, on the twenty-third day of May in the year of Our Lord one thousand eight hundred and forty-six: and Whereas by a writing of partnership signed by the said Andres Castillero on the second day of November in the year of Our Lord one thousand eight hundred and forty-five, with José Castro, Secundino Robles and Teodoro Robles and Friar José M. del R. S. del Real, the said Secundino and Teodoro Robles were made partners and owners in said Mine of four barras, or one-sixth part thereof: and Whereas the said Secundino and Teodoro Robles, on the fourteenth day of September in the year of Our Lord one thousand eight hundred and forty-seven, sold and conveyed two of the said four barras, or one-twelfth part of the said mine to James Alexander Forbes: and Whereas the said James Alexander Forbes on the twenty-ninth day of May in the year of Our Lord one thousand eight hundred and fifty-five, sold and conveyed to the party of the second part one barra or one twenty-fourth part of said mine and lands: and Whereas the said Andres Castillero on the second day of October in the year of Our Lord one thousand eight hundred and fifty-six sold and conveyed to the party of the first part all his right, title, interest, estate, property, possession, claim and demand in and to the said mine of New Almaden, and the said two leagues of land so granted by the President of Mexico: Now therefore, the said party of the first part, for and in consideration of the sum of one hundred Dollars lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and other good and valuable considerations him moving thereunto, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, one undivided twenty-fourth part of all that tract of land and mine called the land and mine of New Almaden (formerly called "Santa Clara"), lying

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and situate in the County of Santa Clara in the State of California, being the mining right acquired by denouncement and registry of discovery, and by the possession and grant of the same, and of three thousand varas of land measured in every direction from the mouth of the mine, given and made by Antonia Maria Pico, First Alcalde, to the said Andres Castillero on the thirtieth day of December in the year of Our Lord one thousand eight hundred and forty-five, and subsequently approved and confirmed by the Junta de Mineria and the President of Mexico, and the tract of two square leagues of land in a square form, the opposite sides of which lie North, South, East and West respectively, in the middle of which is situate the mouth of said mine, being the same land granted to said Andres Castillero by the President of Mexico on the twentieth day of May in the year of Our Lord one thousand eight hundred and forty-six, the title, with order of possession of which was issued by the Minister of Relations on the twenty-third day of Our Lord, one thousand eight hundred and forty-six, and signed by Castillo Lanzas, Minister of said Department of Relations, together with all and singular the tenements, hereditaments and appurtenances belonging or in any way pertaining to the said one undivided twenty-fourth part of said Mine and Lands, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part and to his assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

FREDERICK BILLINGS, [L. S.]

Signed Sealed and delivered in presence of

STATE OF CALIFORNA, City and County of San Francico. } ss.

On this eighteenth day of November, A. D. one thousand eight hundred and fifty-six, before me J. R. West a Notary Public in and for said County personally appeared Frederick Billings to me personally known to be the individual described in and who executed the annexed Instrument, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

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In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(L. S.)

J. R. WEST,
Notary Public.

O. H. No. 48.

"*D. P. L.*" *Exhibited in the Deposition of José Maria Lafragua, January 29th*, 1855. [See pages 480 and 69.]

Page 113. DE SU OFICINA.

La junta de fomento y administrativa de Minería, instalada en 24 de Diciembre de 1842, para cumplir con lo prevenido en el articulo decimo del decreto de su organizacion, remitio al ministerio respectivo en Noviembre de 843 el proyecto de reglamento, que habia a fomado para la mas económica y fiel administracion de los fondos que se le confiaron; pero el Gobierno teniendo presente que no podia llenar sus importantes atenciones sin las manos necesarios para su desempeño, decretó en 30 de Diciembre la planta de sus empleados, y le devolvió el proyecto en Julio de 44, para que lo formase de nuevo con arreglo á las disposiciones posteriores. Ella en enero del mismo solicitó la aprobacion del articulo 29 del reglamento propuesto, sobre que á cado fondo se llevase cuenta separada, cargando al dotal las cantitades que se satisfacion por sueldos en el anterior estabecimiento y al de azogue los que se aumentaban, y le remitió las respectivas propuestas para la provision de las plazas, quedando aprobadas las de dos oficiales y otros tantos escribientes de su secretaria, la de archivero, la de contador, la de dos oficiales y un escribiente de contaduria, y finalmente, la de tesorero: todas los cuales tomaron posesion de sus destinos en los dias 10 de Febrero, 4 y 7 de Marzo, y en 8 del mismo reglamentó la Junta provisionalmente su oficina designando á cada uno de los empleados sus correspondientes labores.

En 19 de Mayo de 845, el Supremo Gobierno nombró á los Sres. D. Benigno Bustamente, Lic., D. José Maria Lacunza, y D. Luis Varela, para que le informaron sobre los decretos, que organizaron nuevamente el Colegio de Mineria, autorizando á la comision para inspeccionar el Seminario y oficina de la Junta. El informe que elevaron al Supremo Gobierno se paso á la misma, y está presidente de su exámen.

Por haber fallecido el primer escribiente de secretaria D. Manuel Garcia del Valle el Supremo Gobierno aprobó el ascenso del segundo, quedando sin proveerse la del primero.

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En 23 de Septiembre del presente año, la Junta concedió licencia á su secretario D. José Maria Castera, a quien tuvo á bien encomendar el Supremo Gobierno una comision, y quedó desempeñando sus funciones el oficial 1°. con arreglo al decreto citado de 30 de Diciembre de 842.

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Pago 130. **AZOGUES.**

El primer apèndice de la última Memoria del ministerio de justicia é instruccion publica contiene lo que compendiosamente espuso la Junta en 24 de febrero de 844, sobre las medidas adoptadas por el gobierno provisional en favor del ramo, los resultados que habian producido hasta la propria fecha y las que á su juicio debian tomarse para que no se hicieran ilusorios los fines laudables, con que aquellas se espidieron.

El periodico Siglo XIX. en sus numeros 1361 y 1362 de 21 y 22 de Agosto de 845, insertó un comunicado del Diario de la Marina de la Habana de 3 de Junio anterior en que se indican las franquicias, que en concepto del articulista debierin adoptarse en la tarifa de la Isla de Cuba, para que se efectuase el transito por su deposito de parte de los azogues destinados á Mexico, que hoy conducen los vapores británicos, con lo que estaba persuadido, se obtendrian ventajas sensibles á favor de la Marina y del comercio de aquella nacion, la cual en virtud de su influencia y de otros varias circumstancias podria con el tiempo favorecer mejor sus interesas y los de la Republica por medio de tratados convenientes.

A juicio del autor remitiéndose el azogue á dicha Isla, mientras que no se pida para el consumo de nuestro pais, y conservándose los capitales españoles en aquel distrito con las garantias de su gobierno, podria lograrse, que sus habitantes tomasen parta en el negocio, usando de sus proprios recursos, para sostenerlo y fecilitarlo, dividiendose en consecuencia los riesgos y los desembolsos; porque venderian sus

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azogues en la Habana, cuantos en los envios directos no quisieran correr nuevos peligros; y por que los grandes intereses, que en la Republica paga el numerario facilitarian la doble operacion, minorando las exhibiciones, supuesto que existiendo el azogue en poder del agente en la Habana, este proporcionario sin duda á los Mexicanos medios adecuados, para comprarlo en España con las garantías de algunos banqueros europeos.

Page 121. En el proyecto, pues, se propone la destruccion del monopolio de azouges, abriendose al efecto un mercado para su compra de primera mano, y en el último caso, con un pequeño aumento en el valor, repartible entre los individuos ó corporaciones, que en la empresa resultaran agraciados.

Pero atendiendo á que el gobierno podio necesitar de algunas anticipaciones sobre la renta, tal vez equivalentes á las ecsigidas en la última contrata, juzga oportuno, que con tiempo tomara parte la Republica, para que se hiciese un negocio entre el banco de Isabel Segunda á otro establecimiento nacional y gobierno de Madrid, à ejemplo del que tenia arreglado el Ministerio Mon con el banco de San Fernando.

Supónese en el articulo, que el capital padria formase, contribuyendo el proprio Banco, algunas casas de Europa por medio de suscriciones y los Mexicanos por el de esta Junta; y que se cediera á los accionistas la parte que dejara al mismo Banco la administracion y venta de azogues, consignándole estos con las guarantias convenientes.

Cree tambien el articulista que de México pudiera ofrecerse directamente al gobierno español el préstamo de una suma considerable por cierto número de años, siempre que se comprometiera á renunciar á otras contratas, espendiendo el efecto á un precio determinado.

Tales son, sobre poco mas ó menos, las bases primordiales de uno de los proyectos formados para que la España enagenase sus azogues en términos proprios á obtener immensas ventajas del comercio recíprico, que hasta hoy hace esclusivamente la Inglaterra; y la Junta al dar á V. E. esta idea del de la Habana, solo lleva por fin el de recordarle la necesidad urgentísima que hay, de que se adopte ésta ú otro cualquiera, para cubrir con menores quebrantos el gran deficiente, que deja el azogue Mexicano en los consumos de las minas, especialmente cuando la contrata celebrada con la casa de Roschild termina en el año entrante, y el Soberano Congreso podia facultar á la Junta como lo hiso en 17 de Febrero de 1843, por en decreto del mismo dia.

En el periódico de Tampico de Tamaulipas, la Esperanza numero 11 de 12 de Marzo del anterior año, los editores copiaron una carta de San Luis Potosi, que anunciaba una bouanza de azogue en Guadalcazar, la que indicaba la extraccion de mas de tres quintales diarios.

La Junta en 26 del propio mes ofició al respectivo gobierno, pidiéndole noticias por menovizadas del descubrimiento con el fin de fomentar su laboreo y beneficio.

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En 2 de Abril contestó: que tenia pedido el correspondiente informe, y que tan luego como lo obtuviera, lo remitiria á la Junta, confirmando la noticia á pesar de que los aparatos destilatorios eran de barro; dijo que en aguellos dias se habian introducido varias partidas hasta de veinte frascos, y que se habian contratado para Guanajuato algunas remesas mensuales.

Como por la mejora de los mismos aparatos deberia obtenerse el incremento de Guadalcazar aprovecharse toda la ley del metal, que hoy se pierde, conseguirse la estabilidad de los productos y lograrse la fundacion de economías en toda clase de gastos, el gobierno del Departamento quiso, que cuanto antes se hiciera una visita científica y la Junta en 16 de Abril, aunque se hallaba al alcance de las ventajas que resultarian de mandar una persona inteligente, que contribuyera á la mejor direccion del laboreo de los criaderos de Guadalcazar y con especialidad a la mas económica y abundante destilacion del azogue, contesto: que entonces no podia hacerlo por la falta de fondos.

El periodico citado en su número 16 de 2 de Abril volvió á hablar de los progresos, que se hacian en Guadalcazar, asegurando, que en cuatro dias se extrajeron cuatro quintales habiendo habido arroba de metal que sin diese diez y siete onzas, no obstante la grande evaporacion, Page 132. que era preciso resultase de la poca inteligencia, con que el metal se beneficiaba; que habia cuatro minas en trabajo y sesenta denunciadas; y que al desarrollarse el espíritu de empresa habia producido muchos rescatadores de metal en piedra.

A reserva de remitir datos mas precisos, el gobierno departmental en 10 de Mayo acompaño cópia del informe dado por la prefectura de San Luis en 5 del mismo. De él aparece que segun las investigaciones practicadas en la mina de San Antonio, a demas de las vetas, mantos y rebozaderos casi superficiales, que se trabajan, habia ya resultado un segundo manto á treinta varas de profundidad, cuyos metales de ley superior, pues que rendian de cuatro á cinco libras por carga, podrian aumentar considerablemente sus productos, perfeccion ándose los aparatos de beneficio, que consisten hoy casi totalmente en cántaros con tubos de barro y conductores de metal; que se confirmaban las especies de que el terreno esplotable occupaba una superficie de cinco leguas cuadradas, poco mas ó menos; que su situacion se halla al Norte de Guadalcazar y circundada toda de abundantes maderas, que conforme á lo espuesto por el juzgado minero respectivo, hasta el 26 de Abril habian sido descubiertas en su jurisdiccion ochenta y dos minas: que no se habian emprendido otras obras que las muy precisas para quemar en lodo, que es el método mas comunmente usado; que de todas las minas solo cuatro se hallaban en frutos: que de la de San Antonio, la mas productiva, se sacaban cincuenta cargas diarias con ley 2, 3 y 4 libras, no sabiéndose con esactitud los productos de las otras: que con el mal método del beneficio, no se apro-

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vechaba toda la ley que tienen: que habia en las immediaciones algun surtido de leña y agua, y que las demas minas registradas se trabajaban en obra incierta, dando la mayor parte muestras del panino, en que se cria el cusabrio.

El ministerio de justicia con fecha 7 de Junio transcribió á la Junta un oficio del gobierno de San Luis de 31 de Mayo, acompañando copia de otro de la asamblea departmental, que contiene la siguiente proposicion.

"Se escitará por conducto del gobierno del Departamento y con conocimiento del supremo de la República, á la Junta de fomento de Minería de México, para que sitúe un fondo de rescate de azogue en el mineral de Guadalcazar, par ahora de veinte mil pesos, y para que, á espensas de sus fondos, construya los aparatos de guerna mas necesarios y útiles, en que por sus costos se beneficien los metales de azogue de aguellas minas, calculado solo un pequeño aumento, para indemnizacion de los gastos de su construccion." La Junta contestó al supremo gobierno en 18 del mismo mes, confesando la conveniencia del reconocimiento y la de que se establecieran los aparatos quejándose al mismo tiempo de la falta de fondos y haciendo presente la necesidad que habia, de que se espeditaran los pagos entorpecidos de los fondos destinados por la ley, para el fomento del ramo de azogues.

El director general de industria en 14 de dicho mes, acompaño una esposicion de la Junta industrial de San Luis, en que con fecha 7 del mismo y al escitar á esta de fomento, para que protegiese eficazmente á Guadalcazar, á fin de evitar que decayera, como no seria remoto sin tan indispensable auxilio, mientras que con él podia asegurarse un éxito brillante, solicitaba el reconocimiento cientifico, aparatos perfeccionados de beneficio y la ereccion de un rescate; pero la Junta tuvo el sentimiento de manifestarle su carencia de fondos; agregando que habiéndolos pedido en 19 del mismo al supremo gobierno, el superior de San Luis designara la persona ó personas que en aquel mineral se encargara de custodiar el dinero que hubiese de servir para el rescate, así como de la compra y venta del azogue, caucionando al efecto el comisionado suficientemente su manejo.

El mismo gobierno en 9 de Julio avisó en contestacion, que los pocos individuos capaces, que habia en el espesado mineral, los consideraba ocupados en sus proprios negocios, creyendo por tanto mas oportuno elegir una persona de San Luis, que por si ó por medio de un agente, bajo su responsabilidad desempeñase el encargo.

La Junta en 20 de Agosto del año anterior, manifesto al gobierno de San Luis, que sin embargo de los escaseces del fondo, situaria allé des de luego cuatro mil pesos para el establecimiento del rescate de azogues en caldo en el repetido mineral, sin otra restriccion que la de que se conservera sin menoscabo la suma indicada, á cuyo fin podia formar y remitir el reglamento correspondiente, comprendiendo en él

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un método adecuado, para favorecer á los esplotadores del azogue y á los mineros que lo compraran, cubriendo todos los gastos de administracion é indemnizando á la persona, que se encargara de ella, bajo los respectivas garantias, y designar al individuo que hubiera de servio la comision, ya fuese de San Luis ó de Guadalcazar. Dicho Gobierno avisó en 27 de Agosto, estar ocupándose ya del establecimiento de la agencia.

Posteriormente el juzgado de Guadalcazar en 30 de Octubre del año pasado manifesto, que las minas de cinabrio registradas llezaban á ciento vienticinco, los denunciadas á treinta y tres, y que aquel estraordinario criadero daba lugar á que se situasen muchas mas de los establecidas hasta entonces, pues siguiéndose los bocas antiguas, que parece fueron desde tiempo inmemorial trabajados por los indigenas, aunque no haya de ello noticia alguna en el archivo del tribunal, se dilatan los escarbaderos como seis leguas en circunferencia del mineral de plata, teniendo una legua en su menor anchura, causa por lo que juzgaba debia encontrarse alli un gran depósito y mas cuando se ve que algunas de los minas trabajados antiguamente manifiestan por sus terreros una profundidad hasta de cien varas y que no obstante los varios registros y denuncios hechos, las minas posesion a das y que presentan abundantes frutos, aunque de escasa ley ascenderán hasta veintecinco, hallandose las demas en investigaciones, pero muy superficiales por falta de capitalistas, que se dediquen al giro, estrayéndose mensualmente ciento y tantos quintales de azogue, à pesar de lo mesquino é in suficiente de los aparatos.

La Junta contesto en 12 de Noviembre, que informase el juzgado, si habia algunas compañias formadas ó por formar que necesitaran de auxilios, y en caso afirmativo manifestase cuales fuesen las minas sobre que debiera emprenderse, las cantidades á que pudiesen subir las acciones, y las bases sobre que hubiera de descansar cada negociacion, á fin de que la Junta con estedato resolviese sin embargo hasta la fecha no ha recibido contestacion alguna, ni de aquel gobierno, ni del juzgado, los que no ha reclamado, esperando que de un dia á otro se pusiesen en corriente los fondos, designados por la ley para este ramo, lo que por desgracia aun no se verifica.

El Exmo, Señor gobernador de San Luis en 19 de Julio y 4 de Diciembre del año pasado, 18 de Abril, 9 y 13 de Mayo del presente remitió á la Junta los documentos que acreditan la estraccion del azogue nacional en Guadalcazar, con el objeto de que se satisfaciese á los interesados el premio de cinco pesos por quintal, concedidos por el articulo 5º del supremo decreto de 24 de Mayo de 1843, à los que estrajesen azogue de los minas de la Republica. Por dichos documentos se ha podido tener una noticia exacta del azoque estraido en Guadalcazar desde Febrero de 844 hasta Mayo del presente, en que

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concluyó el término fijado á dicho premio, cuyo resultado es el siguiente.

Page 134. De la mina de San Antonio, novecientos cincuenta quintales, una arroba, dos libras..... 950 1 2

De la San Augustin, setenta y seis quintales, tres arrobas, dos libras, trece onzas..... 76 3 2 13

De Santa Lucia, cien quintales..... 100 0 0 00

De Trinidad y San Andres setenta y ocho quintales, tres arrobas quince libras una y media onzas..... 78 3 15 1½

Total.....1,205 3 19 14½

La Junta ha ofrecido á una de las compañias de Guadalcazar, remetir á aquel mineral uno de los aparatos destilatorios encargados á Londres, y que no ha podido recibir hasta ahora por el bloqueo.

Así del importe de los premios correspondientes á la estraccion del azoque nacional en Guadalcazar, como del correspondiente á otros ciento trienta y seis quintales sacados del nuevo Almaden en el Durazno, se restan aun algunas cantidades de pesos, que no han podido satisfacerse, á virtud de la suspension de los pagos dol fondo de azogues.

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Mexico, November 17th, 1846.

ISIDRO R. GONDRA,
Oficial 1°. Por ocupacion del Secretario.

Page 147.

Junta de Fomento y Administrativa de Mineria.

Exmo. Sr. Al remitir á V. E. con esta fecha el resúmen de lo hecho por esta junta en los últimos años en debido desempeño de su honroso encargo y del estado actual de los diversos negociados de que se ha ocupado, ha tenido el honor de acompañar le las iniciativas que Page 148. en su concepto deben adoptarse para el verdadero fomento y proteccion de la mineria Mexicana.

Mas para que la grandiosa empresa de la esplotacion de las minas de azogue no quede paralizada por mas tiempo con grave detrimento de la riquera pública la Junta se vé en la necesidad de pedir al supremo gobierno, no dinero por ahora, sino lo que fácilmente puede proporcionarle aun en medio de sus graves urguencias que es crédito, el que se logrará si se mandan espedir immediatamente por el ministerio de hacienda las órdenes respectivas á las aduanas maritimas de Vera Cruz y Tampico para que desde hoy tenga su esacto cumplimiento lo dispuesto en al articulo 12 del decreto de 25 de Septiembre de 1843, remitiéndose directamente á la Junta las libranzas correspondientes

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por los direchos que le consignó la ley tan luego como se levante el bloqueo.

Tal determinacion estrictamente legal tiene á su favor el no gravar por ahora ni en un centavo al erario nacional conprometido en sostener á toda costa la independencia y los mas caros derechos de la nacion; pero contando la Junta para lo succesivo con este fondo, y obteniendo la correspondiente autorizacion del mismo supremo gobierno, podrá quizá proporcionarse recursos con la menor pérdida posible y con ellos continuar fomentando el espiritu de empresa que de otro modo desapareceria con la suma de todos los bienes que ha patentizado en dicha esposicion debe reportar la República.

Ademas, como la ley de 2 de Diciembre de '42 impuso obligaciones á la Junta, esta no puede desempeñarlas, si no se atiende á su justa solicitud, y tendrá entre otros el grave sentimiento de ver cerrar las cátedras de nueva creacion que se abrieron en el colegios nacional de mineria para la instruccion de la juventud dedicada á adquirir los distintos conocimientos que se necesitan para poseer con perfeccion la ciencia mineria.

Para evitar tan grandes males la Junta tieno el honor de dirigirse á V. E. no dudando que interpondrá su influjo respetable, á fin de que pueda disponer en lo que resta de este año lo conveniente hara dar principio en enero á los estudios establecidos en él por la ley.

La Junta disfruta la satisfaccion con este motivo de reiterar á V. E. lar protestas de su distinguida consideracion y particular aprecio.

Dios y Libertad.

Mexico, 17 de Noviembre de 1845.

VICENTE SEGURA,
Presidente.

Por ocupacion del secretario,

ISIDRO R. GONNRA,
Oficial Primero.

Exmo. Sr. Ministro de Relationes D. Jose Maria Lafragua.

U. S. Surveyor General's Office,
San Francisco, Cal.

I James W. Mandeville, U. S. Surveyor General for California, and as such having in my custody the papers of the late Board of U. S. Land Commissioners to ascertain and settle the private land claims of California, do hereby certify the foregoing to be extracts correctly made from a document on file in case No. 366, on the docket of said Board, indorsed, " No. 366, Andres Castillero, Exhibit D. P. L. annexed to dep. of José Maria Lafragua. Filed in office, January 30th,

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1855. Geo. Fisher, Sec'y. Recorded in Rec. of Ev. vol. 18, p. 620 and 611."

Given under my hand and official seal at the City of San Francisco, this 23d day of Novr. A. D. 1857.

{ SEAL }

J. W. MANDEVILLE,
U. S. Surv. Genl. Cal.

O. H. No. 49.

TRANSLATION OF "D., P. L.,"

EXHIBITED IN THE DEPOSITION OF JOSE MARIA LAFRAGUA, JANUARY 29TH, 1855.

OF ITS OFFICE.

Page 119. The junta de fomento y administrativa de Mineria, installed the 24th December 1842, in compliance with the requirements of the tenth article of the decree of its organization, remitted to the proper department, in November, 1843, the plan of regulation which it has formed for the most economical and faithful administration of the funds entrusted to it; but the Government, considering that it could not fulfil its important duties without the hands necessary for their performance, decreed on the 30th of December, the disposition of its employees, and in July, 1844, returned the plan that it might be modified with reference to the subsequent provisions. In January of the same year, it solicited the approval of the 29th article of the proposed regulations, according to which a separate account should be kept for each fund, charging to the endowment the amounts which were expended for wages in the former establishment, and to that of quicksilver the excess, and remitted the respective propositions for the arrangement of the places; those of two officials and as many clerks of the Secretary's office, that of keeper of archives, that of accountant, that of two officials and one clerk of the accountant's office, and finally that of treasurer, being approved, all of whom entered upon the performance of their duties on the 10th of February, 4th and 7th of March. On the 8th of the same the Junta arranged its office provisionally, designating to each of the employees his respective labors.

On the 19th of March, 1845, the Supreme Government appointed the Messrs. D. Benigno Bustamente, Licétiate D. José Maria Lacauza, y D. Luis Varela, to report upon the Decrees which organized the

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Colegio de Mineria, authorizing the Commission to inspect the Seminary and the office of the Junta.

The report which they made to the Supreme Government was passed to the same office, and is awaiting investigation. The first clerk of the Secretary's office, D. Manuel Garcia Del Valle, having died, the Supreme Government approved the promotion of the second, thaf of the first being unprovided for.

On the 23d of September of the present year, the Junta granted leave of absence to its Secretary D. José Maria Castera, whom the Supreme Government had thought proper to charge with a commission, and the first official performed his duties in accordance with the cited decree of the 30th December, 1842.

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QUICKSILVER.

Page 130. The first appendix to the last Memorial of the Department of Justice contains what was briefly expressed by the Junta on the 24th of February, 1844, in regard to the measures adopted by the Provisional Government in favor of this branch, the results which they had produced up to that date, and the means which, in its judgment, should be taken to prevent the laudable ends with which those measures were set on foot from being defeated.

The periodical, "Siglo XIX," in its numbers 1361 and 1362 of the 21st and 22d August, 1845, inserted a communication from the "Diario de la Marina de la Habana," of he 3d of June preceding, in which are indicated the exemptions, which, in the opinion of the writer, should be adopted in the tariff of the Island of Cuba in order to effectuate the transit, by its deposite, of a part of the quicksilver destined to Mexico, which is now conveyed by the British steamers, by which, he was persuaded considerable advantages in favor of the shipping and commerce of that nation would be obtained; and that it could, in time,

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by means of its influence and various other circumstances, better advance its own interests and those of the Republic by proper treaties.

In the opinion of the author, by remitting the quicksilver to the said Island, whilst it is not required for the consumption of our country, and retaining the Spanish capital in that District, the result could be obtained that the inhabitants would take part in the business, using their own resources to sustain and facilitate it; the risks and expenditures consequently being divided. Because as many as might not wish to incur new dangers in direct transmissions would sell their quicksilver in Havana; and because the great interest which money pays in the Republic would facilitate the double operation, diminishing the exhibitions ("exhibiciones.") Supposing the quicksilver to be in the hands of the agent in Havana, he would doubtless afford the Mexicans adequate means of buying it in Spain with the guaranties of European Bankers.

Page 131. In the project then it is proposed to abolish the monopoly of quicksilver, opening a market for its purchase from first hands, and with, at most, but a small increase of value to be divided between the individuals or corporations who might be benefited by the result of the enterprise.

But considering that the Government might need advances on the income, perhaps equivalent to those exacted in the last contract, it is thought proper that in time the Republic should interpose so that an arrangement might be made between the bank of Isabel the Second or some other national establishment and the Government of Madrid, after the example of that which the Minister Mon made with the Bank of San Fernando.

It is supposed in the article, that the capital could be formed, the Bank itself contributing, and also some European Houses by subscriptions and the Mexicans through this Junta; and that it should be conceded to the shareholders that the administration and income of the quicksilver should be left to the same Bank, assigning them to it with the proper securities.

The writer also believes that Mexico could offer directly to the Spanish Government the loan of a considerable sum for a certain number of years on condition that it should bind itself to renounce all other contracts, extending the effect to a fixed price.

Such are, substantially, the original bases of one of the projects formed to the end that Spain might alienate its quicksilver on terms for obtaining immense advantages of the reciprocal commerce, which, as yet, is carried on exclusively by England. And the Junta in presenting this idea of the Havana writer to your Excellency, has no other end in view than to remind you of the most urgent necessity which exists of adopting this or some other, in order to cover, with smaller losses, the great deficiency which the Mexican quicksilver

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leaves in the consumption of the mines, especially when the contract made with the house of Roschild terminates next year, and the Sovereign Congress could empower the Junta as it did on the 17th of February 1843 by its decree of that day.

In the periodical of Tampico, Tamaulipas, la Esperanza, number 11 of the 12th of March of the year preceding, the editors copied a letter from San Luis Potosi, which announced a discovery in quicksilver at Guadalcazar, which indicates the extraction of more than three quintels daily. The Junta on the 26th of the same month addressed the proper Government, requesting detailed information of the discovery, with a view to encouraging its working and development.

On the 2d of April it answered, that it had sought the corresponding information, and that so soon as it could obtain it, it would remit it to the Junta, confirming the intelligence, notwithstanding the distilling apparatus was of clay, and said at that time various parcels up to twenty flasks had been introduced, and that some monthly remittances to Guanajusto had been contracted for.

As by the improvement of the apparatus an increase ought to be obtained at Guadalcazar, in order to profit by all the ley of the metal, which is lost now, to ensure the permanence of the production, and to obtain the inauguration of economy in every class of expenses, the Government of the Department wished that as soon as practicable a scientific inspection might be made, and the Junta, on the 16th of April, although convinced of the advantages which would result from sending an intelligent person who would contribute to the better direction of the labor and works of Guadalcazar, and especially to the most economical and abundant distillation of the quicksilver, answered that it was then unable to do it for the want of funds.

The above mentioned periodical in its number of April 2nd, spoke again of the progress they were making in Guadalcazar, asserting that in four days they extracted four quintals, there having been an arroba of metal which might yield seventeen ounces, notwithstanding the great evaporation which necessarily resulted from the small intelligence with which the metal was reduced; that there were four mines being worked and seventy denounced; and the spirit of enterpise which was excited, had produced traders in the ore, (rescatodores de metal en piedra.)

Reserving the remittance of more precise intelligence, the Departmental Government on the 10th of May transmitted a copy of the report issued from the office of the Prefect of San Luis on the 30th of the same month. From that it appears that, according to investigations made in the mine of San Antonio, besides the leads, veins and outcroppings, almost on the surface, which are worked, there had been struck already a second vein at the depth of thirty feet, whose metals of superior "ley" (since they yielded from four to five pounds to the

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" carga") could increase its products considerably by perfecting the smelting apparatus, which consist now almost entirely of large narrow mouthed pitchers with tubes of clay and conductors of metal; that the opinion that the land to be prospected occupied an area of five square leagues, a little more or less, was confirmed; that its situation was to the north of Guadalcazar, and surrounded by an abundance of timber; that according to the exhibition made by the proper Mineral Court, up to the 26th of April there had been discovered in its jurisdiction eighty two mines; that no works had been undertaken except those very necessary to burn in mud (para quemar en lodo), which is the method most commonly used; that of all the mines only four were profitable; that from that of San Antonio, the most productive, they got out fifty " cargas" a day, with a ley of 2, 3, and four pounds, the products of the others not being exactly known; that with the bad method of smelting which they have, they did not avail themselves of all the " ley" which they have; that there was in the neighborhood a supply of wood and water, and that the other mines registered were worked on an uncertainty, the greater part showing signs of the kind of earth (panino) in which the cinnabar is produced.

The Minister of Justice on the 7th of June, transcribed to the Junta an official letter from the Government of San Luis of the 31st of May, and with it a copy of another from the Departmental Assembly, which contains the followtng proposition:

It will be proposed through the Government of the Department, and with the knowledge of the Supreme Government of the Republic, to the Junta de fomento de Mineria de Mexico, that it should establish a fund for the buying up of quicksilver in the mine of Guadalcazar, for the present, of twenty thousand dollars, and that at the expense of its funds it should construct the apparatus of the furnace most necessary and useful, in which at its expense, the quicksilver metals of those mines may be reduced, only a small increase being calculated for the indemnification of the costs of its construction. The Junta answered to the Supreme Government on the 18th of the same month, acknowledging the propriety of the examination and that of constructing the apparatus, at the same time complaining of the want of funds, and representing the necessity that existed of expediting the arrearages of the funds destined by law for the encouragement of the quicksilver business.

The Director General of Industry, on the 14th of said month, presented a report of the industrial Junta of San Luis, in which with the date of the 7th of the same month, and to urge this Junta de fomento to the efficacious protection of Guadalcazar, so as to avoid its going to decay, which, without such indispensable assistance, would be at no remote period, whilst with a brilliant result could be secured, he solicited the scientific inspection, perfect smelting apparatus, and the

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establishment of a purchasing office (rescate); but the Junta had the pain of manifesting to him its want of funds, adding, that having asked them on the 19th of the same month from the Supreme Government, the Superior of San Luis, should designate the person or persons, who in that mine should be charged with the custody of the money which might serve for the purchasing fund, (rescate), as also with the purchase and sale of the quicksilver, the Commissioner giving sufficient security for his administration.

The Government on the 9th of July gave notice, in answer, that the few capable persons who were in the said mine, were supposed to be occupied with their own private business, believing, for that reason, that it was more proper to choose some one in San Luis, who, either by himself or through an agent under his responsibility, might discharge the trust.

The Junta on the 20th of August of the previous year, represented to the Government of San Luis, that notwithstanding the poverty of the fund, it would place there soon four thousand dollars for the establishing of a purchasing office of the fluid quicksilver in the said mining place, without other restriction than that of preserving without diminution the sum indicated, to which end it could form and remit the corresponding regulation, comprehending in it an adequate method of favoring the workers of the quicksilver and the miners who shall buy it, covering all the expenses of administration and indemnifying the person who shall be charged with it, under the proper guaranties, and designate the individual to perform the trust, whether he might be of San Luis or of Guadalcazar. The said Government announced on the 27th of August, that it was already engaged in the establishment of the agency.

Subsequently, the Court of Guadalcazar, on the 30th of October of last year, reported that the mines of cinnabar registered amounted to a hundred and twenty-five, those denounced to thirty-three, and that the extraordinary productiveness afforded space for the location of many more than those theretofore established, since following the ancient openings, which it appears were worked from time immemorial by the aborigines, although there is no notice of it in the archives of the tribunal, the excavations are spread over about six leagues in circumference from the silver mine, having one league for the least breadth, for which reason it is judged that a great deposit ought to be found there, and the more, when it is seen that some of the mines anciently worked showed, by the heaps of earth, a depth of as much as a hundred varas and notwithstanding the various examinations and denouncements made, the mines held in possession and which yield abundant profits, although of scanty "ley" will go as high as twenty-five, the others being still prospected but very superficially, for the want of capitalists to apply themselves to the business; there being extracted

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monthly a hundred quintals and upwards of quicksilver, notwithstanding the meanness and insufficiency of the apparatus.

The Junta answered on the 12th of November, that the Court should be informed if there were any companies formed or to be formed which would need assistance, and in case there were, it should make known which were the mines that ought to be undertaken, what the amount of the shares should be, and the basis on which each negotiation would have to rest, to the end that the Junta with these data might decide. However up to this time it has received no answer—neither from the Government nor from the Court, nor, indeed, has it demanded any, hoping from day to day that it might be in receipt of the funds appropriated by law for this department, which hope, unfortunately, has not been realized.

His Excellency the Governor of San Luis, on the 19th of July and 4th of December of last year, the 18th of April, 9th and 13th of May of the present, remitted to the Junta the Documents which prove the extraction of the national quicksilver in Guadalcazar, so that the parties interested might receive the premium of five dollars per quintal, granted by the 5th article of the Supreme Decree of the 24th of May, 1843, to those who might extract quicksilver from the mines of the Republic. From those documents an exact statement can be had of the quicksilver extracted in Guadalcazar from February 1844 up to May of the present year, at which time the term fixed for the said premium expired.

Page 134. De la mina de San Antonio novecientos cinquenta quintales, one arroba and two pounds	950	1	2	
De la San Augustin seventy-six quintals, three arrobas, two pounds, thirteen ounces.....	76	3	2	13
De Santa Lucia, one hundred quintals.....	100	0	0	00
De Trinidad y Andres, seventy-eight quintals, three arrobas, fifteen pounds, one and one half ounces.	78	3	15	1½
	1,205	3	19	14½

The Junta has offered to one of the Companies of Guadalcazar, to send to that mine one of the distilling machines ordered in London, and which it has not been able to receive yet on account of the blockade.

Thus from the amount of the premiums corresponding to the extraction of the national quicksilver at Guadalcazar, as also from the amount corresponding to a hundred and thirty-six quintals more extracted from the New Almaden of Durazno, there remain some sums

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of money that could not be paid, by reason of the suspension of the Quickrilver fund.

* * * * * * * * * * *

MEXICO, Nov. 17th, 1846, ISIDRO R. GONDRA,
1st Official on account of the occupation of the Secretary.

JUNTA DE FOMENTO Y ADMINISTRATIVA DE MINERIA.

Page 147. MOST EXCELLENT SIR:—In remitting to your excellency, with this date the summary of the proceedings of this Junta, in the years last past, in the due performance of its honorable trust, and the actual condition of the diverse transactions with which it has been occupied, it has had the honor of reporting to you the initia-
Page 148. tive steps which, in its opinion, ought to be adopted for the true encouragement and protection of Mexican Mining.

But in order that the grand enterprise of the development of the quicksilver mines may not be paralized longer, to the great detriment of the public wealth, the Junta finds itself under the necessity of asking from the Government, not money, for the present, but what it can easily furnish, even in the midst of its great necessities, that is credit, which will be obtained, if the the Minister of Hacienda will cause the proper orders to be issued to the Maritime Custom houses of Vera Cruz and Tampico to the effect that hereafter it may have its exact complement appropriated in article 12 of the Decree of the 25th of September, 1843; the corresponding drafts for the duties which the law assigned to it, being remitted directly to the Junta as soon as the blockade may be raised.

Such an arrangement, strictly legal, has in its favor, that it will not burthen, for the present, to the amount of a cent, the National treasury, now charged with maintaining, at all costs, the independence and the dearest rights of the nation; but the Junta counting on this fund for the future, and obtaining the proper authorization from the Supreme Government itself, could, perhaps, provide resources with the least possible loss, and with them continue to encourage the spirit of enterprise, which otherwise would disappear with the sum of all the goods it has patented in the said exposition, which the Republic ought to avoid.

Besides as the law of the 2d September, '42, imposed obligations on this Junta, it cannot discharge them if its just solicitude is disregarded, and it would have, among others, the great pain of seeing closed the newly created professorships which were opened in the National College of Mining for the instruction of youth dedicated to the acquirement of the various knowledge which is necessary in order to be perfect in the science of mining.

To avoid such great evils the Junta has the honor of addressing it

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self to your Excellency, not doubting that you will interpose your respectable influence, so that during the remainder of this year, it may be able to dispose of what may be required in order to make a beginning in January of the studies established by law.

The Junta enjoys the satisfaction of repeating to your Excellency the assurances of its distinguished consideration and particular respect.

God and Liberty, Mexico, 17th of November, 1845.

VICENTE SEGURA,
President.

On account of the engagement of the Secretary,
ISIDRO R. GONDRA,
First Official.

Most Excellent sir, Minister of Relations, D. JOSÉ MARIA LAFRAGUA.

O. H. No. 50.
(Vide page 219.)

O. H. No. 51).
(Vide page 199.)

O. H. X. No. 1.

Private.

ST. FRANCISCO, 30th Jan. 1846.

EUSTACE BARRON, Esq.

MY DEAR SIR: The accompanying correspondence will be left at Mazatlan by the British ship Emma Captain Elbourn, whose destination is the South Pacific Ocean, and lastly at Valparaiso. In consideration of the payment of one hundred dollars, he has agreed to touch at the first mentioned port, solely for the purpose of delivering my package.

I trust that you will not disapprove of my having taken this method of communicating to what I consider important information. I have given the Captain a bill for the amount, which I presume he will negotiate at Mazatlan.

News have reached this coast, of the final adjustment of the Oregon question, but it is not stated in what manner.

I presume that the Texas affair has not been settled; as the expedition for California has not arrived.

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D. Andres Castillero, a sort of Commissioner from the Mexican Government to this Department, is now working a quicksilver mine near the Mission of Sta. Clara, which mine has yielded 40 per cent. upon the assay of mineral employed.

I have had a deal of trouble with the authorities here, relative to the deposit of the roll of the British ship Emma. The Captain of the Port claims it, and the British laws command the master to deposit it in my hand under the penalty of £25.

I have retained the roll in my possession, in spite of a villainous Captain of the Port, and henceforward shall cause the Captain of any British vessel to furnish a list of his crew copied from the roll.

I shall not fail to address you by every opportunity.

I am, my dear sir,

Your most obedient servant,

JAS. ALEX. FORBES.

P. S.—Be pleased to number my publlc letter No. 81, in lieu of No. 8.

(Endorsed) 1846. J. A. Forbes, S. Fro. 30 Jan. Recd. 17 March. Private.

O. H. X. No. 2.

Private.

San Francisco, 22 Sept., 1846.

My Dear Sir: The Herald has come suddenly into this port, where according to my last words from the Admiral I least expected her.

I send you some notice of the affairs of this country, but everything is in such an uproar that nothing can be trusted to the hands of any person.

Do not think that I shall fail to write you whenever a safe opportunity presents.

I am now in charge of the Quicksilver mine, and am going to work it until I can hear from Castillero, and am upon the point of striking a bargain for four shares.

The mine of which I wrote you by the Juno, does not produce 40 per cent., according to the ore shown us.

The Herald leaves immediately, but I shall write you more at length

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by the Figaro. I think I am right, thut the mine now under my charge gives 20 per cent.

Excuse haste, my dear sir, and believe me,

Yours most sincerely,

J. ALEX. FORBES.

The vessel is now under sail while I write.

(Endorsed): 1846. J. A. Forbes, S. Franc'o 22 Sept'r.

O. H. X. No. 3.

Private.

SANTA CLARA, 14th July, 1847.

ALEXANDER FORBES, Esq.:

MY DEAR SIR: I have the pleasure to communicate to you, that up to the present time nothing has occurred to affect the quiet occupation of the mine of Almaden. Since the departure of Mr. Walkingshaw, Mr. Alden has done little in the mine in consequence of the scarcity of operatives. The indians have almost all left him; and such is the indolence of this class of people, that I am quite certain you will never be able to do anything with such labourers. I should advise you to try and procure some of the natives of the Sandwich Islands, through the influence of Mr. Wyllie. These people should be from the interior, and not from the maritime part of the population. They should be engaged under contract for three or five years, as they are employed by the Hudson Bay Company.

I was presented yesterday with a splendid specimen of quicksilver ore, from a spot within or near the limits of the two leagues conceded to Castillero and Socios, but situated upon the land claimed by the American, Cook, of whom you doubtless have been informed. The person who brought the specimen to me, was sent by one of the discoverers and informed me that in May, 1846, this new vein was discovered and denounced before the authorities of San José; but that in consequence of the war they did not receive possession. One of the parties shewed the vein to a person sent by M. Moerenhout and Sr. Alvarado to treat with them for the sale or contract for working the vein. I immediately had an interview with the discoverers, and informed them that if any such vein did in reality exist without the limits of the two leagues, and documents could be manifested of the denunciation, I was ready to enter into a contract in the name of the Company of Almaden, for working the vein, but that I could not permit

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any claim or operation to be entered upon until the land should be measured; that it would be detrimental to their interest to attempt to make any contract with any other than yourself. M. Moernhout received a refusal from these people to make any arrangement; and this morning called at my house on his journey to St. Francisco, whither he has gone for I know not what purpose. I shall take the necessary measures to frustrate any contract that be made with these persons, as also with another party who denounced another vein, and who are at some expense digging for metal. This last is without the limits of the mine of Almaden, but I think that it will not prove of any value. I have, notwithstanding, agreed that you will work it; that is to say, that you will give the habilitacion upon better terms than any other person.

There is another vein near the mine, of which I have informed Mr. Alden. This will not of course be molested.

I have seen a letter from Mr. McNamara to Padre Real, in which he complains bitterly that he has not received enough for his services in negotiating the mining contract with you; that he ought to have had one barra from each of the socios; that I wrote inaccurate statements to you; and sums up with a furious tirade, telling the Padre that he (McNamara) is a man of great influence with Her Majesty's Minister at Mexico, of whom he is the most intimate friend; that *I* had better be cautious, or I will lose my official situation! and other absurdities which manifest his principles, and how little he is aware of my independence of spirit to be affected by such threats. This letter was evidently written in the supposition that I should learn its contents; I am sorry that I cannot send you a copy of it at the present time, as the Padre is absent. I am ignorant how my letter to you could have given such umbrage to the Rev. gentleman, and I beg that you will have the kindness to send me a copy of that same letter, and also to inform me whether Mr. McNamara is yet in Mexico.

I am, my dear sir,
Yours sincerely and respectfully,
JAS. ALEX. FORBES.

O. H. X. No. 4.

SANTA CLARA, 7 Febr'y de 1848.

ALEXANDER FORBES, Esquire:

MY DEAR SIR: By the Mason I send you some specimens of the new vein, which was duly registered on Saturday, and poso opened; I have not had time to make an assay. Your opinion respecting the abundance of ores of cinnabar in the vicinity of New Almaden is very

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correct. I have this morning caused another denuncio to be made of another veta! and on my return from it I have yet another to make. The samples of these last two vetas are, however, rather *inferior* to the beautiful specimens I now send to you.

I have spoken to Mr. Lyman upon the subject of this survey; and he very willingly agreed to go and see you to-morrow. I shall go the hacienda to-morrow (Thursday,) in order to assist if you resolve upon the measurement before you proceed to Monterey. My opinion of the title of the widow of Berreyesa, or rather my first view of that title, and the information given by her sons, was that the grant was for two leagues, but I have been at her house on my return hither, and I find that the title was given for *one* league, or sitio, and that the word one has been converted into the word two. I advise you of this in order to prevent an incorrect supposition of her boundary line. She correctness of her title can only be ascertained by examining the archives at Monterey. Mr. Lyman tells me that he did not survey Cook's land, although he, Cook, had made some proposition to him to do it. Perhaps it would be safe to take the limit of Cook and the prolongation of that line as one of the limits of the two sitios, without meddling with the widow's land or boundary; but you know that she expects to have some line defined between her land and those two sitios of the hacienda, and will therefore determine as to that operation.

The priest is not yet arrived, nor is there anything new to communicate to you.

I have not had time to make out the power of attorney, but I shall be able to do it before you leave.

The Mason leaves this at nine, A. M.

I am, my dear sir,
Your obt. servant,
JAS. ALEX. FORBES.

(Endorsed) 1848. Mr. Forbes.

O. H. X. No. 5.

TEPIC, 6th February, 1850.

JAMES A. FORBES, Esq., New Almaden:

DEAR SIR:—In reply to your private letter of the 20th December, respecting the two sitios of land, we have to say that we had hoped that the document lately sent, for this grant to Mr. Castillero would have been sufficient, but as you seem to be doubtful on this point, we have spoken to him, he being now here, and his opinion is that if this grant is not tenable it will be better to go upon the three thousand

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varas of the Alcalde, granted at the time of giving possession of the mine, and approved of by the Mexican Government, which approval will be taken from the Mexican archives and sent on to you. Although by the Ordenanzas of Mineria the Alcalde or Judge may not have had strictly a right to grant these 3000 varas, yet being approved by the Mexican Government, would make this valid as a *grant*. We hope however you will find the Berreyesas' lands not to include the hacienda, and consequently either the grant of the two sitios or the 3000 varas would be a sufficient title. Mr. Alexander Forbes will however write you more particularly on this subject.

We are much surprised at the proceedings of Dr. Tobin, whom you say has the intention of coming by the steamer of the first of February. We shall not be sorry that he comes; he will gain nothing by that step, and you may depend upon your being supported whatever he may mean to say or do to your prejudice. The good fortune will be that the principal part of all the Habilitadores and proprietors of the mine will be here to meet him. As however we hardly think he will venture to come we shall say nothing of the reception he will meet with.

We are, dear sir,
Your most obt. serv'ts,
BARRON, FORBES & CO.

(Addressed)—James Alex. Forbes, Esq.

(Endorsed) Barron, Forbes & Co., relative to the departure of Dr. Tobin from N. Almaden, 6th Feb'y, 1850. Answered 26th Feb'y.

O. H. X. No. 6.

SANTA CLARA, 18 de Junio, 1850.

SR. DN. YSIDORO DE LA TORRE:

MUY SEÑOR MIO Y DE MI APRECIO:—Acompaño à V. los sig'tes documentos que pertenecen á esa negociacion, y son los que tienen relacion con mi administracion de ella á saber:

Un pliego papel sellado mejicano, del sello 5°. con copia autorizada de la commnicac'n del ministerio de relaciones esteriores relativa à dos sitios de ganado mayor en N. Almaden.

Seis pliegos en papel comun, con copias autorizadas del contrato de abio de la mina de N. Almaden, incluyendo copia del documento á que se contrae el arriba mencionado pliego, &c. certificado por el Consulado Britanica de Tepic.

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Siete pliegos—siete pliegos de papel sellado mejicano dell sello cuarto, con copias autorizadas del contrato original de la Compañia de la Mina de N. Almaden, fhā 2 de Noveb'ıe, 1845; del poder de D. José Castro á Macnamara, para efectuar el contrato de abio; ratification del mismo por D. Andres Castillero; y cesion de los dos sitios, ratificacion de Castro, &c. certificado por el Consulado Americano en Tepic.

Veinte y ocho cartas y una nota de q. de la direccion grāl en Tepic á D. A. Forbes.

Documentos relativos al pleito de Walkinshaw contra la mina de Nuevo Almaden, incluyendo cartas del dhō recibos, &c.

Recibos, ordenes y cartas, &c., incluyendo recibo del pago de la lancha Emilia; del pago de $3,500 p^{s}. á Antonio Gamez, copias del contrato del Dr. Tobin, &c., &c., y de la gente oprerario por el Vicar of Bray.

Soy deb. S. S. Q. B. S. M.,
DIEGO ALEX. FORBES.

P. D. Por separado incluyo a V. el pagaré de Juan Armstrong y la libranza contra Jesus Herrera en que lite ha anotado el pago de los doscientos pesos.

O. H. X. No. 7.

Sello Quinto. { *Anos de mil ochocientos cuarenta ocho y mil ochocientos cuarenta y nueva.* } Medio Real.

{ MINISTERIO DE RELACIONES ESTERIORES GOBERNACION Y POLICIA.

EXMO. SEÑOR:

El E. ó Y. S. Ministro de Justicia, en oficio de 20 del corriente, me dice lo que copio:

"E. S.: Hoy digo al E. S. D. Vicente Segura, Precidente de la Junta de Fomento de Mineria, lo siguiente:

'E. S. Habiendo dado cuenta al E. S. Precidente interino con la nota de V. E. de 14 del presente á que se servió acompañarme, con recomendacion, la solicitud del Señor Don Andres Castillero para el fomento de la mina Azogue que ha descubierto en la Mision de Santa Clara en la Alta California; se ha servido S. E. aprobar en todos sus partes el convenio celebrado con dicho individuo para principiar la esplotacion de dicho mineral, y con esta fecha se hace la communicacion

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que corresponde al Ministerio de Relaciones Esteriores y Gobernacion, para que libre las ordenes oportunas por lo respectivo á lo que contiene la 8a proposicion, relativa á la concesion de terrenos en aquel Departmento.'

Y tengo el honor de insertario á V. E. á fin de que por lo respectivo a la solicitud del S. Castillero, á que ha tenido á bien acceder el E. S. Precidente interino sobre que como colono se le conceda dos citios de ganado mayor sobre el terreno de su posecion mineria, se sirva V. E. librar las ordenes de que se trata.

Reitero á N. E. &a."

Y lo transcribo á V. E. para que con arreglo á lo que prevengan las leyes y disposiciones sobre colonizacion, ponga al S. Castillero en posecion de los sitios que se mencionan.

Dios y Libertad.

México, Mayo 23 de 1846.

CASTILLO LAZNAS.

E. S. Gobernador del Departamento de Californias.

Es copia fielmente sacada de su original que se presentó en este oficio por las Señores Barron, Forbes y Compañia de este Comercio, y devolviendoseles por mi rubricada, se les da el presente á su peticion para el uso que les convengo; y en fé de todo lo signo y firmo en Tepic á trece de Noviembre de mil ochocientos cuarenta y nueve.

JESUS VEJAR.

Los infrascriptos Escribanos Publicos en esta Ciudad, certificamos y damos fé: que el signo y firma con que se halla autorizada la presedente copia es del Escribano Publico Don Jesus Vejar quien se halla ejerciendo su profecion en este misma Ciudad. Y en comprovacion sentamos la presente en Tepic á trece de Noviembre de mil ochocientos cuarenta y nueve.

PANFILO SOLIS.

EUSEBIO FERNANDEZ.

I, Eustace W. Barron, H. B. M. Consul for San Blas, hereby certify, that the foregoing signatures are in the true handwriting of the subscribers who hold the situations therein represented, and are worthy of all faith and credit.

Given under my hand and seal sf office, in the City of
[SEAL.] Tepic, this 13th day of November, 1849.

EUSTACE W. BARRON.

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O. H. X. No. 7 1-2.

[In pencil.]

BERREYESA'S FARM, 17 Feb. 1848.

MY DEAR SIR: The widow has agreed to have the line of demarcation between the sitios of the mine and her land, to be placed upon the summit of the second hill from her plain, (upon which one of her sons is now gone to put up a white flag in a tree,) and to run along that ridge down to the stream near the road which the said line will cross, and skirting along the base of the hills near the plain, until it reaches Cook's line or boundary between his land and the widow's. This measure will take in the greater part of the Cañada, and I think that it will be very near the line you pointed out to Mr. Lyman.

The widow has desired me to state to you, that she wishes to have her land measured as follows: One league upon the line of division between herself and Cook, and a parallel line to be run to that between her land and the Bernales, but that if you are desirous to have the strip from the point of the hill towards the lomita near Cook's, that she is willing to arrange the matter of purchase with you, and will be glad for you to make her an offer for that part of it.

I am, my dear sir,

Your obt. serv't,

JAS. ALEX. FORBES.

ALEX. FORBES, Esq., New Almaden.

(Endorsed:) Jas. A. Forbes, Feb'y. 1848. Description of land agreed to be included in mine tract.

O. H. X. No. 8.

No. 4.

Por cuanto Don José Castro, vecino de Monterey en el Territorio de la Alta California, socio en una Mina de Azogue, ubicada en la jurisdiccion del Pueblo de San José de Guadalupe, y cuya mina es conocida con el nombre de Almaden de Santa Clara; otorgó en el Puerto de Monterey, á los doce dias del mes de Junio de mil ochocientos cuarenta y seis, un poder especial, autorizando el Presbytero Don Eugenio Macnamára, para que contratase con una Compañia Ynglesa, que se hiciese cargo de la elaboracion y avio de la enunciada mina de Azogue; cuyo contrato realizo el dho. Sor Macnamára; en la Ciudad de Tepic, en veinte de Noviembre de mil ochocientos cuarenta y seis, con el Sor Don Alexandro Forbes, Consul y subdito Britanico; por si, y á nombre de la Compañia que representa; reduciendolo á escritura

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publica otorgada por escribano publico; y aprobada y ratificada, por Don Andres Castillero, residente en la Ciudad de Mexico; y socio tambien en la referida mina. Y habiendose obligado este Señor á recabar el esplicito consentimiento y ratificacion del referido contrator por parte de sus consocios, residentes en este Departamento; por las dudas que pudieren suscitarse acerca de la representacion del Sr. Macnamára.

Yo, Diego Alexandro Forbes, Vice Consul S. M. B. para Californias, autorizado con poder general, amplio é ilimitado de los Srs. Don Secundino Robles y Don Teodoro Robles; socios en la enunciado Mina de Almaden de Santa Clara: Digo, que otorgo en la mas solemne forma que haya lugar en derecho; y me obligo á cumplir exacta y religiosomente, todo cuanto contiene la espresada escritura del contrato celebrado con el Sōr. Don Alexandro Forbes y la Compañia que representa. Lo apruebo y ratifico en todas sus partes, queriendo que se me tenga por uno de los obligados al cumplimiento de su literal tenor, desde su celebracion, hasta cumplidos los diez y seis años estipulados en dicho contrato, en la inteligencia, de que todas las gracias y privilegios que haya concedido, ó que en lo futuro concediere el Supremo Gobierno de Mexico, á los Srs. Dueños de la enunciada Mina de Azogue de Almaden de Santa Clara, en recompensa ó substitucion del premio ó gratificacion ofrecida por el mismo Gobierno (como consta por sus decretos) por el descubrimiento y elaboracion de esta clase minas, serán disfrutados por los dueños de esta, conforme á las acciones que poseen en ella.

En testimonio de todo lo que antecede, y para su fiel y exacto cumplimiento, he firmado este documento, á nombre de mis espresados comitentes, en papel simple a causa de la total falta del sellado, y lo he autorizado con mi sello oficial, por falta tambien de autoridad competente en este lugar. Mision de Santa Clara, Alta California, Republica Mejicana, á los cuatro dias del mes de Mayo de 1847.

DIEGO ALEJANDRO FORBES.

{ Sello }

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SELLO CUATRO. UN REAL.

JESUS VEJAR ESCRIBANO PUBLICO EN ESTA CIUDAD:

Certifico y doy fé que la firma que antecede del Señor Don Diego Alejandro Forbes con que se subscribe el presedente poder otorgado por Don José Castro es la que usa y aconstumbra como Vice Consul de S. M. Britanica en la Alta California bajo el sello que asi mismo se vé, y con tal caracter de Vice Consul es reconocido por las casas mercantiles de ultramar en esta ciudad, dando fé y credito á los instrumentos autenticos que dicho Señor ha espedido, Y por esta razon asi legaliso su firma.

Y á pedimento de los Señores Barron, Forbes y Compañia signo y firmo el presente en Tepic a diez y och de Marzo de mil ochocientos cincuenta, dejando rubricada aquella constancia.

JESUS VEJAR.

El Alcalde 1°. constitutional y Escribano Publico que firmamos, certificamos y damos fé, que el signo y firma que antecede autorizando el presendente certificado, es del Escribano Publico en esta ciudad Don Jesus Vejar, quien se hallo en el ejercicio de su profecion. Asi lo comprobamos en Tepic a diez y ocho de Marzo del mil ochocientos cincuenta.

EUSEBIO FERNANDEZ.

LORETO CORONA.

Consulate of the United States.

I, George W. P. Bissell, Consul of the United States of North America, for this district, hereby certify that the signatures attached to the foregoing document, are in the true handwriting of the subscribers, who legally hold the situations therein represented, and are worthy of all faith and credit.

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{ SEAL } In testimony whereof, I hereunto set my hand, and seal of office, in the city of Tepic, this first day of December, in the year one thousand eight hundred and fifty.

G. W. P. BISSELL.
U. S. Consul.

O. H. X. No. 9.

JESUS VEJAR, ESCRIBANO PUBLICO EN ESTA CIUDAD:

Certifico y doy fé que el Señor Don Alejandro Forbes, socio en la Compania Comercial Yngleza en esta ciudad me ha presentado con diez fojas en el papel sello primero y cuarto el testimonio de una escritura, la cual es al pie de la letra como sigue:

" En la ciudad de Mexico á diez y siete de Diciembre de mil ochoctentos cuarenta y seis, ante mi el Escribano Publico y testígos, presente el Sor. Don Andres Castillero, Capitan de Caballeria Permanente de esta vecindad, cuya persona mayor de edad doy fé conosco y dijo: que por el documento que presenta, consta que como dueño de una mina de plata con ley de oro y azogue, ubicada en el Rancho de Don José Reyes Berreyesa en la jurisdiccion del Pueblo de San Jose de Guadalupe, del Territorio de la Alta California, en el segundo Distrito de Monterey, y cuya mina se conoce con el nombre de Santa Clara, celebró un contrato de compañia de dicha mina con los Señores Comandante General Don José Castro, Don Secundino Robles, y Don Teodoro Robles; asi como con el Reberendo Padre Fray José Maria del Refugio Suarez del Real, como secionario perpetuo de sus consocios por cuatro Barras de la mencionada Mina, cuyo documento otorgado en la Mision de Santa Clara á dos de Noviembre de mil ochocientos cuarenta y cinco en copia sacada del original que existe en el Archivo del Partido, autorizada por el Sor. Don Manuel Castro y Don Antonio Maria Pico, doy fé tener á la vista en las citadas dos fojas utiles en papel comun. Que el relacionado Don José Castro su consocio por si y á nombre de los socios de la mencionada mina otorgó en el Puerto de Monterey á los doce dias del mes de Junio del corriente año de mil ochocientos cuarenta y seis, un poder especial, pero ampleo, á favor del Presvitero Don Eugenio Macnamara para que contrate con una compañia Ynglesa que se hiciese cargo del laborio de las tres pertenencias que á Castro y socios les corresponden en la espresada mina con el objeto de proporcionarle los avios y gastos necesarios para el aumento de la negociacion: todo con entera sujecion á lo que para casos como el presente disponen las ordenanzas de mineria. Que con tal autorizacion, el prenotado Señor Presvitero Don Eugenio Macnamara, en la ciudad de Tepic, á viente y ocho de Noviembre del corri-

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ente año de mil ochocientos cuarenta y seis, realizo el contrata para que fue autorizado con el Señor Don Alexandro Forbes por si y á nombre de la compañia Yngleza que representa, reduciendolo á Escritura Publica otorgada ante el Escribano Publico Don Panfilo Solis, cuyo tenor con el poder que justifica la representacion del Señor Macnamara es como sigue: CORREGIDO (*al margen*) una rubrica.

Escritura de Tepic. En la Ciudad de Tepic á veinte y ocho de Noviembre de mil ochocientos cuarenta y seis, ante mi el Escribano y testigos, el Presvitero Don Eugenio Macnamara actual residente en este lugar, dijo; que Don José Castro, vecino del Puerto de Monterey, como socio en la Mina de Azogue que se haya en la comprension de Santa Clara, y á nombre de sus consocios, que le cedieron sus derechos para que contratase con una compañia Yngleza la elaboracion de dicha Mina, le confirio poder con este objeto, el cual otorgado ante cuatro testigos en dicho Puerto, á doce de Junio del corriente año doy fé tener á la vista original, y su tener á la letra dice:

Poder. En el Puerto de Monterey á los doce dias del mes de Junio de mil ochocientos cuarenta y seis. Yo José Castro con presencia de los testigos que al fin se nombraran: usando del derecho que me han otorgado mis socias para celebrar cualesquiera contrato que se pudiera ofrecer, con respecto á las tres pertenencias que por justos titulos y como descubridores tenemos en la Mina de Azogue, situada en la comprencion de Santa Clara, y favoreciendoles las ordenanzas de mineria y leyes concernientes, especialmente el soberano decreto de siete de Octubre de mil ochocientos viente y tres, para que se proporcione el grande provecho y utilidad al laborio de esta clace de minas, y siendo la que poseen en la actuatidad, la primera unica y principal por su ley, que se ha descubierto en la Nacion Mejicana; y que no pudiendo el Gobierno Supremo darles los aucilios que les corresponden por hallarse en una distancia immenza y ultramarina, sin esperanza de que este pais por si mismo fomente este interesante ramo por no tenor ningunos fondas de que disponer, y sin encontrarse al mismo tiempo un facultativo mineralogico, ni haber brazos para el laborio continuo que se requiere, para el adelanto de esta industria desconocida en este Departamento; ha convenido y conviene dar poder especial, amplio, bastante y por cuanto por derecho se requiera, mas pueda y deba valer al Presvitero Don Eugenio Macnamara, para que representando su persona y la de sus socios contrate con una compañia Yngleza con esclucion de cualquiera otra Nacion para que se haga cargo del laborio de las tres pertenencias de dicha Mina por el tiempo de nueve años con el fin de proporcionar los avios, hacer los gastos necesarios y mantenerla en buen giro y con arreglo á las mencionadas ordenanzas de mineria, siendo los productos de las tres pertenencias de la Mina, para los dueños una mitad y la otra mitad para la compañia Yngleza y cuando

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no se pudiere convenir á ello, se ofrecerá á la compañia Yngleza las dos terceras partes para que los dueños reciban la otra tercera parte, entendiendose que la parte que corresponde á los dueños será libre de gastos; y si aun en esto no hubiere convenio. Se harán otras estipulaciones de acuerdo con Don Andres Castilleros, para facilitar la realizacion de un contrato; y concluido el tiempo mencionado de nueve años se prorrogaran otros siete años mas, en los terminos que se celebre la primera contrata, quedando la negociacion, despues de todo este tiempo á disposicion absoluta de los dueños de la Mina, como tambien todos los materiales, fabricas y demas pertenencias que á ella les corresponden, como maquinas y demas utiles adherentes á este beneficio, sin que por causa alguna tenga la compañia Yngleza derecho á reclamar cualesquiera otra clace de gastos que para su veneficio y propia utilidad llegare á originar.

Y á la firmeza y validacion de lo que en vertud de este poder se ejecutare, se obliga el otorgante en toda forma de derecho a su complemiento, y para lo cual se somete a los Señores Jueces que del caso deban conocer, en cuyo testimonio lo firmo con los cuatro testigos que lo son Don David Spence, Don Juan Malarin, Don Manuel Dias y Don Antonio Maria Pico, en el dia mes y año ya mencionados.

JOSÈ CASTRO.

DAVID SPENCE,
MANUEL DIAS,
JUAN MALARIN,
ANTONIO MARIA PICO.

Sigue la Escritura de Tepic.

Que el inserto poder no le esta revocado ni limitado en manera alguna; y que despues de haber solicitado con el mayor empeño el negocio para que fue facultado, ha celebrado con el Señor Don Alejandro Forbes, subdito y Consul Britanico por si, y por sus socios en esta empresa, el contrato que espresan las siguientes condiciones:

1ª. *Primera:* El Señor Don Alejandro Forbes y sus socios se hacen cargo del laborio de las tres pertenencias que comprhende dicha Mina de Azogue por el termino de diez y seis años, segun esta facultado por el inserto poder, y sin que sea nesesario el acuerdo de Don Andres Castillero, en razon de que este contrato esta fuera de los limites para que fue autorizado el relacionado.

2ª. *Segunda:* Que el Señor Forbes y socios estan en la obligacion de proporcionar los avios nesesarios, erogar los gastos presisos y mantener la Mina en buen giro y con arreglo á las ordenanzas de mineria.

3ª. *Tercera:* Que de los productos de las tres pertenencias que

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comprhende la Mina, percibiran, dos terceras partes el Señor Forbes y sus socios, quedando la otra parte á favor de los dueños, sin que de ella se dedusca gasto alguno.

4ª. *Cuarta:* Que concluidos los diez y seis años de esta compañia queda la negociacion á la disposicion absoluta de los dueños, asi como todos los materiales, fabricas, y demas pertenencias que á ella le correspondan, como maquinas y otros utiles anecsos á la negociacion; y por nungun motivo tendran derecho á reclamar el Señor Forbes y sus socios, cualesquiera otra clace de gastos que para su beneficio y propia utilidad lleguen á originarse.

Presente el Señor Don Alejandro Forbes, cuya persona doy fé conosco, por si y como representante de los demas accionistas en este asiunto, é impuesto de las anteriores condiciones del poder incerto dijo; que aquellas estan arregladas en un todo á los terminos con que ha celebrado este negocio.

Ambos otorgantes manifestaron: que este contrato queda celebrado bajo las condiciones estipulodas que se obligan á observar y cumplir religiosamente, sin interpretacion, y á no reclamar esta escritura en todo ni en parte, y el que faltare será estrechado á su observancia por la via ejecutiva, asi como al pago de los perjuicios y gastos que se originen, cuyo monto defieren en la relacion jurada de quien sea parte, sin otra prueba de que se releban, aunque se requiera de derecho. Y á la firmeza de todo lo referido obligan los otorgantes sus bienes y los de los socios de la Mina y del Señor Forbes, y los sometan á la jurisdiccion de los Señores Jueces que de sus causas deban conocer, para que á cumplimiento los estrechen como por sentencia definitiva, consentida y pasada en autoridad de cosa juzgada. Asi lo otorgan y firmaron siendo testigos los ciudadanos Nicolas Figueroa, Manuel Covarrubias y Luis Villalbaso presentes y vecinos; doy fé.

EUGENIO MACNAMARA.

ALEJANDRO FORBES,
PANFILO SOLIS.

Sacose de su registro hoy dia de su otorgamiento en estas cuatro fojas del papel correspondiente: doy fé.

(un signo) PANFILO SOLIS,
Escribano Publico.

Concluye la Escritura de Tepic y sigue la presente.

Concuerda la anterior escritura con la copia original que en cuatro fojas utiles doy fé tenen á la vista.

El prenotado Señor Don Andres Castillero continuo diciendo: que en la mas solemne forma que haya lugar en derecho otorga: que se obliga á cumplir por su parte exacta y religiosamente como uno de los socios contratrantes con el Señor Forbes todo cuanto contiene la escritura incerta, que aprueba y ratifica en todas

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sus partes, queriendo que se le tenga desde este momento por una de los obligados al cumplimiento de su literal tenor.

Desde hoy hasta cumplidos los diez y seis años del contrato, se obliga y á sus herederos y susesores á no reclamar cosa alguna contra la escritura incerta; pero si lo hiciere quiere no ser oido en juicio ni fuera de el.

Cede en favor del Avio y por los diez y seis años de la contrata, los dos sitios de ganado mayor de que el Supremo Gobierno le tiene hecha gracia, segun consta por el documento oficial que presenta para que quede copeado al final de la presente escritura y salga incerto en las copias que de ella se espidan.

Y por cuanto á la falta de solemnidad que pueda notarse en el poder incerto en la escritura que va copeada en la presente, se obliga á recabar el esplicito consentimiento de sus consocios que ratificaran la presente escritura para quitar las dudas que puedan ocurrir á cerca de la representacion del Padre Don Eugenio Macnamara por los consocios del Señor Castro y del que habla. Declara igualmente que está anuente de que el contrato de que hobla esta escritura no tenga efecto hasta que la compañia Yngleza se halle en quieta y pacifica posecion de la Mina á que se refiere.

Con cuyas calidades y condiciones el prenotado Señor Castillero se obliga por su parte al cumplimiento de cuanto queda dicho; y asegura que para el otorgamiento de la presente escritura no ha sido engañado; sino antes le, es util á sus intereses, y que en el no hay mas condiciones que las espresadas, ni el convenio envuelve lesion ni usura de ninguna especie, como lo jura por Dios y la Senal de la Cruz; pero si alguna resultare del ecseso le hace gracia y donacion á la compañia Yngleza, pura, perfecta é irrevocable, con insinuacion y renunciacion de la *ley segunda titulo primero, libro diez de la novicima recopilacion.*

Desde hoy hasta cumplidos los diez y seis años del contrato y reservandose unicamente los derechos que por el dominio y propiedad le pertenecen del de posecion y demas que tenga, se desapodera, quita y aparta, asi como á sus heredéros, y todos los cede, renuncia y traspasa en el relacionado Señor Forbes como representante de la compañia Yngleza, á quien por la presente le confiere ampleo poder y facultad bastante, constituyendolo procurador en su propia causa, para que con sugecion á las ordenanzas de mineria, y con total arreglo á la presente escritura, se aproveche la compañia de los productos que con arreglo á la misma le pertenecen practicando todo lo demas para que esta facultada.

Se obliga á la evicion seguridad y saneamiento de este contrato que por su parte le asegura le será cierto y seguro, y que por el no se le moverá pleito; pero si alguno resultare, de su cuenta lo seguirá hasta dejar á la compañia en quieta y pacifica posecion, lo que si no lograre le pagará toños los daños y perjuicios con las contas procesales y per-

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sonales que se causen. Se sujeta al tenor literal de la *ley primera, titulo primero libro diez de la novicima recopilacion*, cuyo contenido sabe y quiere se le tenga por obligado al cumplimiento de la presente escritura.

Y siendo presente el Señor Don Francisco Martinez Negrete de esta vecindad cuya persona mayor de edad doy fé conozco, é impuesto del contenido de esta escritura dijo; que teniendo orden espresa y facultad bastante por el Senor Alejandro Forbes, á su nombre y el de la compañia Yngleza, acepta este instrumento dando por contentos y satisfechos á los interesados en ella. El varias veces dicho el Señor Don Andres Castillero al cumplimiento de cuanto queda espuesto, obliga su persona y bienes presentes y futuros y con ellos se somete al fuero y jurisdiccion de los Señores Jueces que de sus causas conforme á derecho puedan y deban conocer, para que á ello lo compelan y apremien como por sentencia definitiva, consentida y pasada en autoridad de cosa juzgada; renuncio su domicilio y vecindad con la general del derecho y la que prohibe su general renunciacion. Y por ante mi asi lo otorgó y firmó con el Señor Negrete, siendo testigos Don Manuel Ferraras, Don Octaviano de la Rosa, y Don Manuel Barron presentes y vecinos: doy fé.

ANDRES CASTILLERO.

FRANCISCO MARTINEZ NEGRETE.

NAZARIO FUENTES,
Escribano Nacional y Publico.

Documento oficial. Certifico y doy fé: que el documento oficial de que se habla en la anterior escritura es del tenor siguiente:

Al Margen. { MINISTERIO DE RELACIONES ESTERIORES GOBERNACION Y POLICIA.

ESCELENTISIMO SEÑOR:

El Escelentisimo ó Y. S. Ministro de Justicia, en oficio de viente del corriente, me dice lo que copio:

Escelentisimo Señor: Hoy digo al Escelentisimo Señor Don Vicente Segura, Precidente de la Junta de Fomento de Minoria, lo siguiente:

Escelentisimo Señor: Habiendo dado cuenta al Exmo. Señor Precidente interino con la nota de V. E. de catorce del presente á que se sirvió acompañarme, con recomendacion, la solicitud del Señor Don Andres Castillero para el fomento de la Mina de Azogue qua ha descubierto en la Mision de Santa Clara en la Alta California, se ha servido Su Escelencia aprobar en todas sus partes el convenio celebrado con dicho individuo para principiar la explotacion de dicho mineral, y con esta fecha se hace la comunicacion que correspende al Ministerio de Relaciones Esteriores y Gobernacion, para que libre las ordenas oportu-

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nas por lo respectivo á lo que contiene la octava proposicion, relativa á la concecion de terrenos en aquel Departamento.

Y tengo el honor de incertarlo á V. E. á fin de que por lo respectivo a la solicitud del Señor Castillero, á que ha tenido á bien acceder el Escelentisimo Precidente interino, sobre que como colono se le conceda dos sitios de ganado mayor sobre el terreno de su posecion mineria, se serva V. E. librar las ordenes de que se trata.

Reitero á V. E. et cetera.

Y lo participo á V. E. para que con arreglo á lo que prevengan las leyes y disposiciones sobre colonizacion, ponga al Señor Castillero en posecion de los dos sitios que se mencionan.

Dios y Libertad.

Mèxico y Mayo viente y tres de mil ochocientos cuarenta y seis.

CASTILLO LANZAS.

Escelentisimo Señor Gobernador del Departamento de Californias.

Sacose de su registro dos dias despues de su otorgamiento para el representante de la compañia en estas diez fojas utiles de los sellos primero y cuarto, que segun la ley corresponden, siendo testigos a la aca y correccion de ella y de los documentos incertos, los mismos instrumentales, de que doy fé.

Firmado con un signo,

NAZARIO FUENTES.
E. N. P.

Los Escribanos Publicos que signamos y firmamos, certificamos y damos fé: que Don Nazario Fuentes es tambien Escribano Publico de esta capital y el signo y firma que anteceden, son suyos, los mismos que usa y aconstumbra para autorizar los documentos que ante el pasan como tal escribano fiel y legal, a los que se han dado y dan entera fé y credito. En fe de lo cual sentamos la presente, que va autorizada con el sello de Nuestro Nacional Colegio de Escribanns Mejico á diez y nueve de Diciembre de mil ochocientos cuarenta y seis.

Firmado con un signo, ROMULO DE ZEVALLOS.
Firmado con un signo, FRANCISCO VILLALON.
Firmado con un signo, ANDRES VELLIO MEGIA.

Al margen un Sello que dice "Colegio Nacional de Escribanos de Mejico, año de 1846."

Y a solicitud verbal del mismo Señor Don Alejandro Forbes y para el uso que le convenga le doy el presente signando y firmando en Tepic a tres de Diciembre de mil ochocientos cuarenta y nueve, habien-

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dose usado del papel comun por no haber del sello cuatro en las oficinas de su espendio, como de ella doy fé.

JESUS VEJAR.

El Alcalde segundo y Escribano que subscrimos certificamos y damos fé: que el signo y firma con que se halla autorizada la presente copia es del Escribano Publico en esta ciudad Don Jesus Vejar quien se halla en el ejercicio de su profecion. Asi lo comprobamos en Tepic, a tres de Diciembre de mil echocientos cuarenta y nueva.

PANFILO SOLIS.

José A. Esturia.

British Consulate.

I, Eustace W. Barron, H. B. M. Consul for Tepic and San Blas, hereby certify that the foregoing signatures are in the true handwriting of the subscribers, who hold the situations therein represented, and are worthy of all faith and credit.

{ SEAL } Given under my hand and seal of office, in the City of Tepic, this 4th day of December, 1849.

EUSTACE W. BARRON.

ANSWER IN EQUITY. [see page 473.]

In the Circuit Court of the United States, for the Districts of California.

James Tobin, et al,
vs.
Robert Walkinshaw, et al. } In Equity.

The joint and several answer of the said James Alexander Forbes, and Robert Walkinshaw, and William E. Barron, defendants, and the disclaimer of the said James Alexander Forbes, to the bill of complaint of the said James Tobin, trustee, and Maria Z. Bernal de Berreyesa, José de los Santos Berreyesa, and others.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties, or other imperfections in said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts as these defendants are advised is or are material or necessary for them to make answer unto, these defendants severally answering, say:—

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§1. They deny that on the twentieth day of August, A. D. 1842, and in the life time of the said José Reyes Berreyesa, Juan B. Alvarado, then Governor or Political Chief of California, granted to the said José Reyes Berreyesa, for the use of himself and family, a certain tract of land, situated in what is now the County of Santa Clara, in the State of California, and districts aforesaid, known as the Rancho de la Cañada de los Capitancillos, or the Rancho of San Vicente, bounded on the west by the lands then belonging to, and known as the Rancho of Justo Larios, and separated therefrom by a conventional line, commencing at a point at the foot of the range of low hills near the Pueblo of San José, near to and north of the angle formed by the junction of the Arroyo Seco and the Arroyo Alamitos, and running thence south through the said angle by the slope of the hill in the centre of the Cañada to the Sierra Azul; on the south by the foot of the said Sierra; on the east by the Laurel Hills; and on the north by the said low pueblo hills, as the said complainants have in their said bill of complaint stated.

§2. And these defendants further severally answering say, they are informed and believe, that on the 20th day of August, A. D. 1842, the said Juan B. Alvarado, then Governor of the Department of the Californias, did make and sign a document of concession, intending to grant to the said José Reyes Berreyesa, for his personal benefit and that of his family, a part of the place named the "Cañada of the Capitancillos," containing an area equivalent to one square league, bounded on the north by the low hills adjoining the plain of the Pueblo of San José; on the south by the Sierra; on the east by the Laurel Hills, and on the west by the rancho of citizen Justo Larios, which has for its boundary a straight line drawn southerly from the angle formed by the junction of the Arroyo Seco and the Arroyo de los Alamitos, along the eastern base of the hill, which is situated in the middle of said Cañada, to the Sierra which is mentioned and described in the title of Justo Larios, and on the map referred to in said title; which title or grant to the said Justo Larios was made by the said Juan B. Alvarado, Governor as aforesaid, on the first day of August, A. D. 1842; and that the said Governor Alvarado sent the said document of concession, so made as aforesaid in favor of the said José Reyes Berreyesa, to be delivered to him.

§3. And the Defendants further severally answering say, that the said José Reyes Berreyesa refused to accept the said grant or concession, so as aforesaid offered to him by the said Governor Alvarado; and with his own hands he delivered to Manuel Jimeno, then Secretary of State for the said Department, the said document of the said intended grant or concession, declaring to the said Jimeno that he the said José Reyes Berreyesa refused to accept the said grant or concession, at the same time giving the reasons for his refusal. And these

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defendants further severally answering say, that after the said refusal of the said José Reyes to accept the grant or concession of the land, so as aforesaid intended to be made to him by the said Governor Alvarado, to wit, on the 10th day of February, 1844, he the said José Reyes addressed a petition to Manuel Micheltorena, then Governor of the said Department, setting forth that he had no title to the said land of San Vicente, and requesting the said Governor to make him a grant of the said narrow Cañada de los Capitancillos, and of all the Lomaria or hilly land adjoining it, and extending on the west from the point of the hill in the middle of the Cañada to the plain of the Arroyo de las Llagas in the Sierra, which distance he describes as two leagues, a little more or less, and declaring moreover in the said petition, that, in the year 1842, Governor Alvarado had sent him a title to part of said land, which he had refused to accept.

§4. And this Defendant, James Alexander Forbes, for himself further answering, saith: and these defendants, Robert Walkinshaw and William E. Barron, believe it to be true, that in the latter part of January or early part of February, A. D. 1848, he saw in the hands of the Complainant, Zacharias, the widow of the said José Reyes, a document purporting to be a grant from the said Governor Micheltorena to the said José Reyes, dated in the year 1844, and signed with the signature of the said Micheltorena; that he read carefully the said document which purported to be a grant or concession by the said Micheltorena as Governor of the State Department, to the said José Reyes Berreyesa of the aforesaid Rancho de San Vicente, Cañada de los Capitancillos, and bore the genuine signature of the said Micheltorena, with which this Defendant was and is well acquainted; and this defendant further saith, and the Defendants Walkinshaw and Barron believe it to be true, that the said document, was, when he saw it as aforesaid, by the said Complainant Zacharias, widow of the said José Reyes Berreyesa, deceased, and in her house on the said Rancho exhibited to this Defendant, and to Mr. Alexander Forbes, who was then largely interested in the Mine of New Almaden, near to the said Rancho, and who requested the said widow to show him the title papers of her late husband the said José Reyes, to the Rancho de San Vicente, in order that he might know how near their lines as claimed by the said widow and heirs of the said José Reyes deceased, came to the Mine of New Almaden, and to enable him to have a survey made of the Mining Possession hereinafter to be mentioned, and of the grant of two square leagues around the mouth of the Mine, hereinafter to be mentioned, so that there might be no dispute concerning their boundaries, between the owners of the Mine and Mining Possession, and the said two square leagues, on the one part, and the widow and heirs and the said deceased José Reyes on

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the other. And this Defendant saith, that in the document of title so exhibited as aforesaid, there was a palpable forgery by the erasure and alteration of the words "*un sitio*," into "*dos sitios*," in that part of the title which described the quantity of land intended to be granted, which was observed at the first glance, both by this Defendant and the said Alexander Forbes, and by them mentioned to the said widow, who denied that any alteration had ever been made in the original grant; and upon this Defendant and the said Alexander Forbes insisting that the said erasure and alteration had been made, and were too apparent on the face of the said paper to be doubted, or in good faith denied, it was agreed that the said widow should send one of her sons to Monterey to procure a certified copy of the said concession, for comparison with the said document, which was accordingly done; and afterwards, that is to say, a few days before the 14th day of Feb'y, 1848, the son returned, bringing with him a copy of said grant which was certified by William E. P. Hartnell, who was at that time Keeper of the Archives of the former Mexican Government in California, and as such legally in charge of the original document of which the foregoing was a certified copy. And this Defendant further saith, that either on the 14th February, A. D. 1848, or a few days thereafter, he saw the said certified copy, and examined it, and compared it with the document of title exhibited as aforesaid by the said widow, and found it to be in all respects a true and accurate copy of the last named document, with the exception, that according to the certified copy, only one square league was granted, the latter containing the words "*un sitio*," in the place where in the former, the said words had been by erasure and alteration changed into "*dos sitios*," as aforesaid; that this Defendant does not now remember the date of said Micheltorena concession more nearly than that it was dated some time in the year 1844, nor does this Defendant remember the boundaries of the tract of land, mentioned in the said document and intended to be granted more accurately than that the said title purported to grant to the said José Reyes Berreyesa, the Rancho of San Vicente, part of the Cañada de los Capitancillos. And these Defendants aver and so charge the truth to be, that the aforesaid erasure and alteration was a forgery made by the said José Reyes Berreyesa, in his life time, for the purpose and with the intent of defrauding the Government of Mexico of a portion of its public domain, and of deceiving the said Castillero, by making him believe that his newly discovered mine was not situated on the public lands of Mexico, but on the private property of the said Berreyesa, and thereby to gain a corrupt advantage at the expense of the said Castillero; and that the said grant was by the means of the said forgery rendered null and void.

§5. And the Defendants further severally answering say, they believe it to be true that the said complainants have in their possession, or under their control, a document, purporting to be a grant or con-

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cesson, made on the 20th August, A. D. 1842, to the said José Reyes Berreyesa in his life-time, by the said Governor Alvarado, for the use of the said José Reyes and that of his family, of a certain tract of land situated in the said county of Santa Clara, and in the Districts aforesaid, known as the Rancho of the Cañada de los Capitancillos, and that the complainants claim the said tract of land, under and by virtue of the said alleged grant or concession; and these defendants do further say, they believe the said document bears the genuine signature of the said Alvarado, and was made by him, and by him sent to the said José Reyes Berreyesa in the life-time of the latter, and in the year 1842, but these Defendants say, that the said José Reyes Berreyesa, when the said document containing the said concession reached him, refused to accept the said grant and to hold the said lands under and by virtue of the title so offered him, and with his own hands returned the said document, to the said Manuel Jimeno as aforesaid, stating to the said Jimeno his unwillingness to accept the said concession, and declaring his refusal to accept the same, and that thereby the said document of intended concession or grant (which is the same grant alleged by the complainants in their said bill of complaint, to have been made to the said José Reyes Berreyesa, by the said Governor Alvarado on the 20th day of August, A. D. 1842,) was rendered inoperative and utterly without effect, and did not transfer from the Mexican Nation or from any other source, to the said José Reyes Berreyesa any title either legal or equitable in or to the said land in the said document mentioned and described.

§6. And these Defendants further severally answering say, that the said alleged concession to José Reyes Berreyesa, made as aforesaid by Governor Alvarado, on the 20th day of August, 1842, was never submitted to the Departmental Assembly of California, and was never approved by that Body. And further, that the said alleged concession to the said José Reyes, was intended to be a concession under and by virtue of the Colonization Law of the Mexican Republic of the 18th August, 1824, and the Executive Regulations of 21st November, 1828, made for the purposes of settlement, cultivation, and the raising of stock, and did not convey any title to any minerals within the land intended to be granted.

§7. And these Defendants further severally answering say, that the said document of concession, now set up in the complainants' bill of complaint, and refused and rejected by the said José Reyes Berreyesa as aforesaid, was never after the said refusal of the said José Reyes to accept the same, and the grant or concession intended by the said Alvarado by means thereof to be made him, delivered to the said José Reyes or to any person for him, by any Governor of the said Department, nor by any other Mexican authority in the said Department, nor by any officer or person whatsoever, capable of making the grant

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or concession intended by the said Alvarado to be made as aforesaid, to serve him, (the said José Reyes Berreyesa,) as title to the said lands, nor with the intention on the part of such officer or other person, thereby to convey any right, title, interest or estate to the said José Reyes Berreyesa, in and to the lands mentioned and described in the said document; but these Defendants believe that the said alleged document of title was fraudulently stolen and taken out of the archives of the former Mexican Government in California, since the year 1848, by some of the heirs of the said José Reyes complainants, either personally or by procurement, they well knowing that the said concession, made by Micheltorena, had been rendered null and void by the said forgery, and could not be received in any court of law or equity of this State or of the United States, or by the United States Board of Land Commissioners as evidence of title, either legal or equitable.

§8. And these Defendants further severally answering say, that the tract of land by the said complainants, in their said bill of complaint, alleged to have been granted on the 20th day of August, 1842, by the said Governor Alvarado to the said José Reyes, is correctly described in the said bill as far as regards its eastern and northern boundaries according to the terms of the said alleged grant; and that the said complainants, in their said bill of complaint, have also correctly described the western boundary of said tract of land in so far as they have described it as bounded on the west by the Rancho of Justo Larios; but they deny that according to the terms and true meaning of the said alleged grant, the said tract of land is separated from the Rancho of Justo Larios by a conventional line, commencing at a point at the foot of the range of low hills, near the Pueblo of San Jose, near to and north of the junction of the Arroyo Seco and the Arroyo Alamitos, and running thence south through said angle by the slope of the hill in the centre of the Cañada to the Sierra Azul, as the said complainants in their said bill of complaint have alleged. And these Defendants say that the complainants in so much of their said bill as states and describes the dividing line between the said lands of Justo Larios, and the said tract of land by them alleged to have been granted to the said José Reyes Berreyesa, and in so much of the exhibit by them filed with their said bill of complaint, and marked *Exhibit* "C" as pretends to delineate the said dividing line, have falsely and fraudulently described and delineated said line.

§9. And these Defendants further severally answering say, that the dividing line between the tract of land so alleged by the complainants to have been granted to the said José Reyes Berreyesa, and the said rancho of Justo Larios, is a straight line commencing at the junction of the said Arroyo Seco and the Arroyo de los Alamitos, and running thence southerly along the eastern base of a small hill near the middle of the Cañada until it reaches the Sierra.

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§10. And these Defendants further severally answering say, that as to so much of the said Complainants said bill of complaint as states, that the tract of land so alleged to have been granted to the said José Reyes, is bounded on the south by the Sierra Azul, the said Defendants not knowing what the said Complainants mean by the Sierra Azul, cannot answer the same; but that if by the Sierra Azul the Complainants mean that range of hills which lies immediately along the southern border of the valley or Cañada of the Capitancillos, extending from the eastern boundary of the said tract of land to the Arroyo de los Alamitos, which range of hills so lying on the southern side of the said valley and the low Pueblo hills on the northern side thereof, do in fact make the land lying between them a valley or Cañada, then the Defendants admit the said statement of the Complainants bill to be true; but if, by the term Sierra Azul, the Complainants mean any other range of hills, then the Defendants deny the said statement to be true.

§11. And these Defendants further severally answering say, they believe it to be true that the said José Reyes Berreyesa, for five years prior to the date of the said alleged grant, and ever after until the time of his death, with his family, continued to be in the public possession of a part of the said Cañada de los Capitancillos, being a part of the land so alleged to have been granted to him, but these Defendants further severally say, that they, or any or either of them, to the knowledge or belief of the others or other of them, know not and have never been informed, save by the said Complainants bill, and cannot set forth as to their belief or otherwise, whether the said possession of the said José Reyes Berreyesa was a lawful or peaceable possession; or whether he resided on the said land, improving or cultivating the same, as required by the provisions of the colonization laws.

§12. And these Defendants further severally answering say, they deny that the said José Reyes Berreyesa died sometime in the year 1847, and they also deny that he died seized or possessed of the said lands in the said bill of complaint mentioned, or of any other lands, under or by virtue of the grant alleged by the complainants in their said bill of complaint, to have been made to him by Governor Alvarado on the 20th day of August, A. D. 1842. And this Defendant, James Alexander Forbes, further severally answering saith, and these Defendants, Robert Walkinshaw and William E. Barron, believe it to be true, that the said Jose Reyes Berreyesa died in the month of June or in the early part of July, A. D. 1846, and that if by virtue of any title the said José Reyes was possessed or seized at the time of his death, of any part of the tract of land alleged as aforesaid by the complainants to have been granted to him on the 20th day of August, 1842, he was so seized and possessed by virtue of the title exhibited as aforesaid by the complainant, Zacharias, his widow, to Mr. Alex-

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ander Forbes, and this Defendant, James Alexander Forbes, in the year 1848.

§13. And these defendants further severally answering say, they believe it to be true that when the said José Reyes Berreyesa departed this life, he left surviving him his said widow, Maria Z. Bernal Berreyesa, and his lawful children, José de los Santos, Santiago, Francisco, Fernando, Ygnacio, José, Encarnacion, Nemecio, Maria del Carmen, Loretto, and Magdelena, his heirs at law.

§14. And these Defendants further severally answering say, that they, or any, or either of them, to the knowledge or belief of the others or other of them, know not, and have not been informed save by the said complainants bill, and cannot set forth as to their belief or otherwise, whether, on the 12th day of July, A. D. 1850, the said widow and heirs of the said José Reyes deceased, demised said lands and all mines therein, with the appurtenances, to Richard Roman, Charles V. Stuart, and James Hepburn, and their assigns, for the term of twenty years, thence ensuing.

§15. And these Defendants further severally answering say, that they, or any, or either of them, to the knowledge or belief of the others or other of them, know not, and have not been informed save by the said complainants said bill, and cannot set forth as to their belief or otherwise—whether, on the 12th day of September, 1855, the said lease-hold Estate in the said lands and tenements with the appurtenances, aforesaid, for the remainder of the said term, was duly assigned, transferred, and conveyed unto the said James Tobin, in trust, for the use and benefit of the said widow and heirs at law of the said José Reyes Berreyesa, deceased, as in the said bill of complaint specified, and to such uses as they may appoint.

§16. And these Defendants further severally answering, say, they believe it to be true, that the said widow and heirs at law of the said José Reyes Berreyesa, filed their petition before the United States Board of Land Commissioners, appointed to ascertain and settle the private land claims in California, by the act of Congress of the third of March, 1851, for the confirmation of their right or title to a certain tract of land called the Rancho de San Vicente, Cañada de los Capitancillos, but these defendants say, that they, or any or either of them, to the knowledge or belief of the others or other of them, know not, and have not been informed save by the said Complainants said bill, what are the boundaries of the tract of land claimed in the said petition, nor when the said petition was filed, nor what was the prayer of the said petition, nor what proceedings were had thereon, (except the Decree of Confirmation), and as to those matters can not set forth as to their belief or otherwise; and as to the said decree of the said Board, they say, they deny that the said decree confirmed to the said widow and heirs of the said José Reyes Berreyesa, deceased, the tract

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of land alleged by the Complainants in their said bill of complaint, to have been granted to the said José Reyes by Governor Alvarado on the 20th day of August, 1842, as set forth, bounded and described in the said bill of complaint; but they say that by the said decree of confirmation there was confirmed unto the said widow and heirs a certain tract of land, being the same tract of land heretofore in this answer described by these Defendants, as the tract of land called for and described and intended by Governor Alvarado to be granted, by the title or document of concession, dated the 20th of August, 1842, and in the 23d section of this answer, more particularly described as delineated on *Exhibit* "X," which document of concession the said José Reyes refused to receive as aforesaid; and that none other land was by the said decree confirmed unto the said widow and heirs of the said José Reyes. And these Defendants believe it to be true, and say, that the claim which was confirmed by the said decree of the said Board stands on appeal, and that the said decree is not final.

§17. And these Defendants further severally answering say, they believe it to be true that the said Nemecio Berreyesa, a son and one of the heirs of the said José Reyes, deceased, departed this life in or about the month of July or August, A. D. 1854, leaving Benita Rodriguez, his widow, and Paula, Filiberto, Maria and Feliciana, his children and heirs at law, him surviving, and that the said children are minors; but these defendants, or any or either of them, to the knowledge or belief of the others or other of them, know not and have not been informed, save by the complainants' said bill, and cannot set forth on their belief or otherwise, whether the said Nemecio died testate or intestate.

§18. And this Defendant, Robert Walkinshaw, further severally answering saith, and these Defendants, James Alexander Forbes and William E. Barron, believe it to be true, that at the time of the death of the said Nemecio, he the said Nemecio, had no right or title, interest or estate, in or to any part of the tract of land mentioned and described in the said complainants' bill of complaint; and that the said widow Benita, and the said children and heirs of the said Nemecio have not, nor have any of them, any right, title, interest or estate in and to the said tract of land, derived from the said Nemecio, by inheritance or otherwise; and further, that this Defendant, Robert Walkinshaw is now owner and possessor, and has so been from the month of July, 1854, of all the title and estate of the said Nemecio, deceased, in and to the whole of the said Rancho of San Vicente, Cañada de los Capitancillos, which the said Nemecio inherited from the said José Reyes, or had in any other manner acquired before the 5th day of April, A. D. 1853, on which day John F. Pyle purchased at a sale held in the city of San José, by the Sheriff of Santa Clara County, under and by virtue of an execution duly issued upon a judgment ren-

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dered in the District Court of the Third Judicial District of the State of California, within and for the said County of Santa Clara, in favor of Nicolas Valencia, and against the said Nemecio Berreyesa, and duly levied, all the right, title, interest and estate of the said Nemecio Berreyesa, in and to the said Rancho San Vicente, Cañada de los Capitancillos; and that on the 8th of October, A. D. 1853, (the said property having never been redeemed) Joseph W. Johnson, ex-sheriff of the said County, the same person into whose hands while Sheriff of the said county, the said execution was first placed, and who made the the said levy and sale, conveyed unto the said John F. Pyle, his heirs and assigns, all the estate, right, title, claim and interest of the said Nemecio Berreyesa, in and to the land aforesaid, by deed duly executed, delivered, acknowledged and recorded; and that by conveyances effectual in law to pass the same, and for a valuable consideration by him given, this Defendant, Walkinshaw, became and is now the owner and possessor of all the title and interest of the said Nemecio in the said lands which was conveyed to the said Pyle as aforesaid, and has so been since the 24th of July, 1854.

§19. And these defendants further severally answering say, they deny that the said complainant, Santiago Berreyesa, hath, or had at the time of filing the said bill of complaint, and for a long time before, any right, title, or estate, in or to the said Rancho San Vicente, Cañada de los Capitancillos, derived by inheritance from his father the said José Reyes. And this Defendant, Robert Walkinshaw, for himself further answering saith, and these Defendants, James Alexander Forbes and William E. Barron, believe it to be true, that on the fifth day of November, 1850, this Defendant purchased at a sale held in the City of San José, by the Sheriff of Santa Clara County, under and by virtue of an execution issued upon a judgment rendered in the District Court of the Third Judicial District of the State of California, within and for the said County of Santa Clara in favor of Martin Flores, and against the said Santiago Berreyesa, and duly levied all the right, title, interest, and estate of the said Santiago Berreyesa in and to the said Rancho San Vicente, Cañada de los Capitancillos, and thereupon John Yontz, the Sheriff of said county, and by virtue of his said office, and said proceedings thereunto duly authorized, conveyed to this Defendant, Walkinshaw, all the right, title, and interest of the said Santiago Berreysa, in and to the said land, the said interest being the one undivided twentieth part of the said land, by deed duly executed, delivered, and acknowledged on the 5th of November, 1850, and recorded in the office of the County Recorder the next day.

§20. And this Defendant, Robert Walkinshaw, further severally answering saith, and these Defendants, James Alexander Forbes and William E. Barron, believe it to be true, that on the 25th day of January, 1849, he lent to the Complainant, Fernando Berreyesa, and to

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his said brother Nemecio, then living but now dead, the sum of One Thousand Dollars to be paid on or before the last day of May thence next ensuing; and the said Fernando and Nemecio, in consideration of said loan, did by public act in writing, and to secure the said sum of money and interest to the said Walkinshaw, hypothecate their entire interest in the said Rancho of San Vicente, Cañada de los Capitancillos, and surrendered possession of the same to the said Walkinshaw as a further security: whereby the said Walkinshaw became entitled to the possession of the said Rancho, in the manner and to the extent that the said Nemecio and Fernando had enjoyed the same, and entered into possessien thereof, under and by virtue of the said hypothecation; that thereafter when the contract of sale between Theodore Shillaber and certain of the Complainants, more fully hereinafter described, was made, the said Walkinshaw being interested with the said Shillaber in the said contract, this Defendant is informed and believes that the original document of the said hypothecation was surrendered by an agent of his, Gamiz y Alcalde, now dead, to the said Nemecio and Fernando, in acknowledment of the payment of the debt, for the security of which it was given, and by them taken as part of the consideration they were to receive from the said Shillaber, on account of the said contract, to the extent of the debt and interest by the said instrument secured; and that the said debt so contracted by the said Fernando and Nemecio, to this Defendant Walkinshaw, unless it was surrendered by the said Walkinshaw's agent to Fernando and Nemecio as aforesaid, and by them received and accepted as part of the money which constituted the consideration of the contract with the said Shillaber, has never nor has any part thereof, been paid to the said Walkinshaw by the said Nemecio and Fernando or either of them, or in any manner satisfied, nor has the right of the said Walkinshaw to the possession of their part and interest in the said Rancho, by virtue of said hypothecation, ever been taken from or surrendered by him.

§21. And the said Defendants further severally answering say, that they have caused at great expense a very minute and accurate survey, both lineal and topographical, to be made of the said tract of land granted as aforesaid to the said Justo Larios on the first day of August, A. D. 1842, and of the said tract of land alleged by the Complainants in their said bill of complaint, to have been granted by the said Governor Alvarado to the said José Reyes Berreyesa, on the 20th day of August, 1842, and of the country adjacent to the said Ranchos; which survey was made by competent and skilful surveyors, and is a correct and true survey of the tract of land of which it purports to be made; and that they have further caused a map of the said survey to be made and lithographed, which map is a correct representation of the said survey in all respects, and truly describes and delineates the said country and the boundaries of the said Ranchos as they are given

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and described in the said grant to Justo Larios, and in the said alleged grant to José Reyes Berreyesa; and the said Defendants herewith file a copy of the said map, marked Exhibit "X," which they pray may be considered part of this their answer.

§22. And the Defendants further severally answering say, that the tract of land on the said Exhibit, "X" delineated as follows: Beginning at Station O, at the junction of the Arroyos Seco and Alamitos, and thence down the stream, which, below said junction, is named on said Map, Arroyo de los Capitancillos, to its junction with another Arroyo called Arroyo Seco; thence up said last named Arroyo to Station No. 44; thence in straight lines from Station to Station consecutively to Station No. 64; thence in a straight line to the starting point, (this last line closing the survey, and being drawn from the junction of the said Arroyos Seco and Alamitos southerly along the Eastern base of the hill in the middle of the Cañada to the Sierra,) and containing one square league, less about 800 acres, is a true and correct survey of the Rancho granted as aforesaid to the said Justo Larios, if the Arroyo de los Capitancillos, and not the low hills lying to the north thereof, is to be taken as the northern boundary of the said Rancho; and that if the said low hills are to be taken for such northern boundary, it would make no difference whatever in said southern boundary, meaning from Station No. 44 to Station No. 64; and no difference in the direction of the eastern boundary line, meaning the line drawn from the junction of the Arroyos Seco and Alamitos, southerly by the eastern base of the hill in the middle of the Cañada to the Sierra; and no difference in the western boundary line of the said Rancho, except to extend it from the junction of the Arroyos Seco and Capitancillos at Station No. 24, to the foot of said low Pueblo hills. And these Defendants further say, that the title of the said Justo Larios, does not name any northern boundary to the land granted, but that the Map which accompanies his title lays down the Pueblo Hills, on the north of the said Arroyo de los Capitancillos. And these Defendants say, that the land included in the said delineation of the said Rancho of Justo Larios, with the additional strip of land added to the southern boundary thereof described on Exhibit X, as contained between that portion of the southern boundary line, which extends from Station No. 47, at the point K, thence along the Stations consecutively to Station No. 64, and from Station No. 64 to the point I, and from I to J, and from J to K, would contain one square league of land, the quantity granted as aforesaid to the said Justo Larios, and would include a portion of the Sierra, which, by the title and the accompanying Map of the said Justo Larios, is made the southern boundary of his Rancho.

§23. And these Defendants further severally answering say, that the tract of land mentioned and intended to be conveyed in the pre-

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tended grant of the 20th August, 1842, alleged by the complainants to have been made by Governor Alvarado to the said José Reyes is truly delineated on said exhibit, as follows, (except that the following delineation takes in a portion of the Sierra, which by the said alleged grant is made the southern boundary of said Rancho, and includes a greater quantity of land than one square league by five hundred and eleven acres,) that is to say: Beginning at station O at the junction of the said Arroyos Seco and Alamitos; thence in an easterly direction a little inclining to the south, along the base of the Pueblo Hills, in straight lines from station to station as they are consecutively numbered, to station No. 10; thence in a southerly direction to a point marked L; thence in a westerly direction to the point of intersection of the southern and eastern boundary lines of the said Rancho of Justo Larios, as surveyed for one square league, at the point marked I; thence in a straight line to the beginning; and that the tract of land so delineated contains the whole of that part of the cañada or valley of the Capitancillos which is described in the said alleged grant to the said José Reyes, and moreover embraces a portion of the Sierra which constitutes his southern boundary, and contains more than one square league of land, by so much as is contained in the triangular area marked on the said exhibit ILM, that is to say, five hundred and eleven acres, and they deny that any land whatsoever outside of the limits above delineated was mentioned, or described, or conveyed, or intended to be conveyed to the said José Reyes, by the said alleged grant of the 20th August, A. D. 1842.

§24. And these Defendants further severally answering say, that in the said alleged grant of the 20th August, 1842, to the said José Reyes, only a part of the valley of the Capitancillos, extending from the eastern boundary line of Justo Larios to the head of the valley in the Laurel Hills, a distance of two leagues, and none of the adjacent hills, was mentioned or intended to be granted; and that the said alleged grant calls for an area of one square league; and they further say that the petition of the said José Reyes Berreyesa to the Governor of California, dated June 2d, 1842, which preceded the said alleged grant, asked for the said narrow cañada and the adjacent hills, and described the area of the tract solicited to be two square leagues.

§25. And these Defendants further severally answering say, they deny that the tract of land mentioned and described in the said grant alleged as aforesaid by the said Complainants in their said bill of complaint to have been made to the said José Reyes by Governor Alvarado on the 20th day of August, 1842, contains any mines of cinnabar which have ever been discovered or worked; that they believe there is a quarry of limestone on the said tract of land in the hill nearly opposite and to the south of the word "de" in the name "Rancho de Berreyesa" as printed on said Exhibit "X," but that they, nor any

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of them, do not know of any other quarry of limestone on the said tract of land; that they believe there was formerly a large number of growing trees on the said tract of land, but they further severally say, that they or any or either of them, to the knowledge or belief of the others or other of them, have never been informed save by the said Complainants bill, and cannot set forth as to their belief or otherwise, whether the principal value of said tract of land consisted in the said alleged mines of cinnabar or quarries of limestone and growing trees.

§26. And these Defendants further severally answering say, they deny that some time in the year 1849, or at any other time, they, or either or any of them, by themselves or their, or any of their agents or abettors, unlawfully or wrongfully entered into and upon any lands or premises belonging to the complainants, or any or either of them; and they particularly deny that they, or either or any of them, themselves or by their or any of their agents or abettors, in the year 1849, or at any other time, unlawfully and wrongfully entered into or upon the premises, which are mentioned and described in the pretended grant, alleged by the said complainants in their said bill of complaint to have been made by Governor Alvarado to the said José Reyes on the 20th August, A. D. 1842; and they deny that since the year 1849, or at any other time, they, or any or either of them, have ever wrongfully taken possession of all or of any part of the premises mentioned and described and intended to be conveyed in the said pretended grant to said José Reyes, which lies west of the Arroyo de los Alamitos, together with all or any part of the said tract of land which lies east of and along said Arroyo of four hundred yards in width. And they further severally deny that they, or any or either of them, have wrongfully cut down and destroyed about five thousand or any other number of the growing trees upon said tract of land, of the average value of twenty dollars, or of any other value, or of no value; and they deny that they, or any or either of them, have opened quarries on the said tract of land, and received therefrom large quantities of lime, or any quantity of lime, of the value of five thousand dollars, or of any other value, or of no value; and they deny that they, or any or either of them, have opened in the said tract of land extensive mines of cinnabar, or any other mines of cinnabar; and they deny that they, or any or either of them, have removed from the said tract of land large or other quantities of quicksilver, of the aggregate value of five millions of dollars, or of any other value, or of no value.

§27. And these Defendants further severally answering say, it is true that one James Tobin, whom they believe to be the complainant of that name, in the said bill of complaint named, did, on the 15th day of September, A. D. 1855, and before the filing of the bill of complaint in this cause, file his declaration in ejectment in this honorable Court on the law side thereof, for the recovery from these Defendants of the

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tract of land in the said declaration described, which description is in the same words, which the said complainants in their said bill have falsely and fraudulently used to describe the tract of land which they pretend as aforesaid was granted by Governor Alvarado to the said José Reyes on the 20th day of August, 1842; and that on the filing of said declaration, summons issued thereon against the Defendants in said declaration named; and they further say, that they have answered the said declaration, denying that the plaintiff hath any title to the land therein mentioned, and further denying each and every allegation therein contained; and that the said suit in ejectment is now at issue.

§28. And these Defendants further severally answering say, they deny the combination and confederacy in the 12th Section of the said bill of complaint charged against them; and they particularly deny that combining and confederating for the purpose of working any mine whatsoever, and of disposing of the profits thereof to their own use, they continue to commit, or have ever committed any acts of waste or trespass upon any lands belonging to the said complainants or to any, or to any one of them, either in the cutting down and burning of the timber thereon; or in the sinking of any mine therein; or in the taking from such a mine large, or other quantities of cinnabar; or in the reducing of the same to quicksilver at the average rate of five thousand pounds daily, or at any other rate; as the said complainants in their said bill of complaint have charged.

§29. And these defendants further severally answering say, that on or a few days before the 22d day of November, A. D. 1845, Andres Castillero, a Mexican by birth, domiciled in the Department of California, discovered a mine in what is now the County of Santa Clara, in the State of California, and Districts aforesaid, and what was then the Jurisdiction of San José Guadalupe, 2d District of the said Department; that there being no Mining Deputation, or Mining District in the said Department, and no Judge of First Instance in the 2d District of said Department at that time, Andres Castillero presented himself on the 22d November, A. D. 1845, before the 1st Alcalde of the Jurisdiction of San José Guadalupe, and in writing represented the fact of said discovery, and the names of his associates, who were four, not counting the said discoverer, and all other matters and things relative to the said discovery, required by the ordinances on that subject; that the said Castillero, having been at first mistaken in regard to the nature of the minerals so discovered, did afterwards, to wit, on the 3d day of December, A. D. 1845, make known in writing to the said First Alcalde, the true character of the said minerals so discovered, and caused the said representation to be added to the registry in the office of the said First Alcalde, of the said Castillero's first representation concerning the same: that the proper notices of the registry of said discovery having been posted up as required by law, and a pit

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(pozo) opened of the dimensions required by law, Antonio Maria Pico, Alcalde of first nomination as aforesaid, accompanied by two witnesses, for the want of a Notary Public, did within ninety days from the registry of said discovery, to wit, on the 30th December, 1845, put the said Andres Castillero in the possession of the said mine, and of a tract of land measured three thousand varas to all points from the mine, and did grant to the said Castillero the said tract of land, being a tract of land in a square form, with its opposite sides lying north and south, and east and west, respectively. And these Defendants further severally answering say, that although public notices of the registry of the discovery of the said mine were immediately, on such registry being made as aforesaid, posted up in conspicuous public places as required by the laws and ordinances of Mexico on that subject, no person appeared before the said Alcalde pretending to have right to the said discovery against the said Andres Castillero, within ninety days from the date of the discovery, or within ninety days from the said registry thereof, or within ninety days from the posting up of such public notices, or within any period determined by the laws and ordinances, within which a person claiming an adverse right might contest the right of the discoverer to the said mine and mining possession. And these Defendants further say that the name of the mine so discovered and registered, and granted, was at first, "The Mine of Santa Clara," and that it was about the year 1847 or 1848, changed to the "Mine of New Almaden," which name said mine has ever since borne.

§30. And these Defendants further severally answering say, that afterwards, to wit, on the twelfth day of May, A. D. 1846, in the city of Mexico, whither the affairs of the said mine had taken its said discoverer, he, the said Andres Castillero, entered into negotiations with the Mexican Government to procure funds sufficient to work the said mine on a larger scale than his own individual means, or those of his partners would admit of, and having presented his proposals to the Junta de Fomento y Administracion de Mineria, the highest mining tribunal in Mexico, and especially charged by law with the duty of devising and proposing rewards to the discoverers of mines of quicksilver, the said Junta did favorably report to the President of Mexico upon all the said proposals, and the President of Mexico, on the twentieth day of May, A. D. 1846, approved the contract as proposed by the said Junta, and that thereby a contract was concluded between the Mexican Government and the said Castillero, by which the Government agreed to advance the sum of five thousand dollars, and a number of iron flasks or retorts, to the said Castillero, and to be reimbursed said expenditures in a certain quantity of quicksilver, the first yielded by the mine, to be delivered to the said Government by the said Castillero, at the Port of Mazatlan.

§31. And these Defendants further severally answering say, that

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the Mexican authorities being highly pleased with the brilliant discovery so made by the said Andres Castillero, of an article so important to a country in the situation of Mexico, whose principal wealth consists in ores of gold and silver, the President of Mexico, upon the petition of the said Andres Castillero, and in reward of that discovery, was pleased to grant him, by title of colonization, a tract of land having an area equal to two square leagues, in a square form, the opposite sides of which lay north and south, and east and west, respectively, in the middle of which was situated the mouth of said mine; and by order of the 23d May, 1846, issued from the Ministry of Relations, reciting the said concession so made to the said Castillero, directed the Governor or Political Chief of the said Department to put Castillero into the possession of said two square leagues of land. And the said order was delivered to the said Castillero, to serve him as the evidence of his title, and as the authority under which the Governor of the said Department should proceed to put him in possession of the said land.

§32. And these Defendants further severally answering say, that the position of the mine so discovered by the said Andres Castillero is correctly designated on the said Exhibit X, by the black spot near the words "New Almaden Mine," and that the square area ABCD, laid down on the said exhibit, truly delineates the tract of land, of the superficial extent of two square leagues, granted as aforesaid by the President of Mexico to the said Andres Castillero; and that the square area marked on the said exhibit EFGH, truly delineates the tract of land measured three thousand varas to all the points from the mine, which by the said Alcalde Antonio Maria Pico was designated as the mining possession incident and appurtenant to the said mine, and granted as aforesaid to the said Castillero, and of which the said Castillero was put into possession as aforesaid by the said Antonio Maria Pico, with two assisting witnesses.

§33. And these Defendants further severally answering say, they are informed and believe, and so charge the truth to be, that when Andres Castillero discovered the said mine, and caused a registry of his discovery to be made, the said José Reyes Berreyesa, who was then living, falsely represented to the said Castillero that the newly discovered mine was on his land, that his grant or concession of the said land being the said Rancho of San Vicente, in the Cañada de los Capitancillos, called for two square leagues, and was derived from the Mexican Government, by document of title made and issued on the 20th day of November, A. D. 1844, signed by Manuel Micheltorena, at that time Governor of the Department of the Californias, and by Manuel Jimeno, Secretary of State in the said Department, and noted in the proper book on page 13; and that the said José Reyes did fraudulently and with intent to deceive the said Castillero, make with his own hand a pretended copy of the said original grant, and exhibited it

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to the said Castillero, and delivered it to him, and represented to the said Castillero that it was a true copy of his said grant; and that in the said pretended copy there was a material and important variation from the original in this, that whereas the said original grant called for and intended to grant only one square league, and expressly and absolutely confined the said José Reyes to that quantity of land, the said pretended false copy made it to appear that the quantity granted was two square leagues, and positively and expressly names and calls for that quantity; that the said José Reyes was guilty of this gross deceit and fraud for the purpose of inducing the said Castillero to believe and declare that the mine so discovered was situated on the land of the said José Reyes; and the said Castillero, believing the said false statements of the said José Reyes, and further supposing that the direction of the western boundary line of the said Rancho of San Vicente was such as to throw the newly discovered mine on the Berreyesa side thereof, in which respect the said Castillero was mistaken, as he might well be, in view of the positive declaration of the said José Reyes, to the effect that the said mine was on his land, and considering further the want of all the means by which the location of said line might at that day be accurately determined, did in his representation to the Alcalde state that the Mine which he had discovered was situated on the Rancho of the said José Reyes Berreyesa; that the said Andres Castillero left California in the early part of the year 1846, in the month of March, and took with him to Mexico the said pretended copy of the concession made to the said José Reyes by the said Governor Micheltorena, and was there for the first time informed, and obtained the information, from the said Micheltorena, that the quantity of land granted by him as Governor of the Department of the Californias, to the aforesaid José Reyes Berreyesa, in the aforesaid concession of the Rancho of San Vicente, in the Cañada of the Capitancillos, was one square league and no more, and that the said pretended copy of the said original document of concession contained a falsehood, in making it to appear that two square leagues were thereby gramted; that the said Castillero, before he left California as aforesaid, had been informed by some persons who lived in the neighborhood of the said Rancho of Berreyesa, that he had made a mistake in representing the mine to be on the land of the said Berreyesa, and that it was not on his land; that in the year 1847, in the month of January, the said Castillero sent inclosed in a letter to the said Alexander Forbes, the said pretended false copy, so given as aforesaid by the said José Reyes to the said Castillero, and stated in the said letter that the same was given to him by the said José Reyes, and contained a falsehood in regard to the quantity of land granted, in that it called for two square leagues instead of one, and that his *colindantes* had told him before he left California that his Mine was not on the land of the said Berreyesa; and fin-

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ally, that the said Castillero having so learned from persons in California the mistake he committed in representing the newly discovered Mine, now called the Mine of New Almaden, to be situated in the lands of the said José Reyes, and having also learned from Micheltorena the fraud that had been practiced on him by the said José Reyes, in making for him in his (the said José Reyes) own handwriting, and in delivering to him the said pretended and false copy of his said concession and declaring it to be a true copy of the same, regarding the lands adjoining on all sides the said Mine of New Almaden as public lands (*terrenos valdios*), did petition the President of Mexico for a grant of two square leagues by title of colonization, to be located on his mining possession, and obtained a grant for the same from the President of Mexico.

§34. And this Defendant, Robert Walkinshaw, further answering saith, and these Defendants James A. Forbes and William E. Barron believe it to be true, that some time in the month of October, A. D. 1849, the complainants Zacharias, widow of the said José Reyes, and Nemecio, and Ygnacio, and Carmen, and Loretto, and José de los Santos, made and entered into a contract of sale with Theodore Shillaber, of the city of San Francisco, whereby they sold to the said Shillaber all their right, title, and estate in and to the following tract of land, bounded as follows, that is to say: On the west by the hills mentioned in the title of concession, and the Ranch de los Capitancillos, (meaning the said Rancho of Justo Larios,) on the east and north by the Arroyo de los Alamitos, as far as an oak tree marked with a cross at the ford of the stream, (which point is designated on Exhibit X by the letter "U,") and from this oak along the line of the hills as far as the Picacho of Chual; and on the south by the Sierra Azul or Blue Mountains, it being the intention of the said vendors and the said Shillaber, that the above described tract of land would comprehend the mine of New Almaden, with its "*Hacienda de beneficio*"; that the price which the said Shillaber agreed to pay for the entire interests of the said widow, and all the heirs of the said José Reyes in and to the said tract of land, was the sum of twenty thousand dollars, or at that rate, to the said widow and each heir, according to their respective interests and shares in and of the same. That the said contract was reduced to writing and signed by the said Zacharias, widow of the said José Reyes, by her son the said Ygnacio, who was thereunto duly authorized, and who also signed for himself; and by the said Loretto, by her brother the said Nemecio, who was thereunto duly authorized, and who also signed for himself; and by the said Carmen by her husband Lorenzo Pineda, who was thereunto duly authorized; and by the said José Encarnacion, and the said Magdalena by the said Ygnacio who was thereunto duly authorized; and that the said contract of sale was agreed to and made by the said widow Zacharias, both for herself and her son the said José de

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los Santos, one of the Complainants, who duly authorized his mother to act for him in the premises; that the written contract of sale, signed as aforesaid, was delivered by the vendors to the said Shillaber, he paying them at the same time the sum of five hundred dollars in cash, and agreeing to start from San José immediately, for San Francisco, and send back the balance of the purchase money, that is to say, the sum of nineteen thousand and five hundred dollars, to be paid to those who had signed, according to their respective shares and interests, to which arrangement the said vendors readily assented; that thereupon the said Shillaber departed immediately for San Francisco, and as soon as he arrived there sent a messenger to San José with the sum of nineteen thousand five hundred dollars, to be left with Josiah Belden, his agent, who had instructions to pay it on the said contract in the manner aforesaid; that between the time of the said Shillaber's departure from San José and the arrival at the last named place of the said money, an interval of perhaps as much as three days, the said widow and heirs, vendors as aforesaid, under the expectation and promise of receiving a larger price from another person, with whom, after the said contract of sale was made with the said Shillaber, they had been in treaty for the sale of the said land, refused to receive the money which he had sent in compliance with his said contract, to be paid to the said widow and the other Complainants, vendors; that the sum of nineteen thousand five hundred dollars being then deposited with Josiah Belden, at his store in the City of San José, the said vendors, by José Fernandez, Alcalde of 2d nomination, were duly cited, according to law, to appear and receive the same on the said contract and according to the terms thereof; that the said money was tendered to the said vendors in sums corresponding to their respective shares in the land, and they were requested to receive the same from the said Shillaber in fulfilment of his part of the said contract, which they and each of them refused to do; that the said Shillaber fully and faithfully complied with all his engagements and undertakings under the said contract, and that the Complainants, vendors as aforesaid, after havmade a solemn and well considered contract of sale, and received a part of the consideration in money, did fraudulently refuse to accept the balance of the consideration so due to them, and so tendered to them, in order that they might, with a greater show of success, fraudulently attempt to repudiate the contract, and thus secure the larger price which had been promised them, and did thereafter institute proceedings to annul and set aside the said contract as will appear in this answer.

§35. And this Defendant, Robert Walkinshaw, further severally answering, saith: and these Defendants, James A. Forbes and William E. Barron, believe it to be true, that afterwards, to wit, on the twenty-sixth day of December, A. D. 1849, the said Shillaber sold

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and conveyed to this Defendant all his right, title and estate acquired under or by virtue of the said contract of sale so made by him with the aforesaid Complainants, vendors, the said Walkinshaw reimbursing said Shillaber all money paid on that behalf, and undertaking to pay all money due on the said contract to the widow and heirs of the said José Reyes Berreyesa.

§36. And this Defendant, James Alexander Forbes, further severally answering, saith: and these Defendants, Robert Walkinshaw and William E. Barron, believe it to be true, that some time in the year 1849, about the month of October, hearing that the said Theodore Shillaber was in treaty with the said widow and heirs of the said José Reyes Berreyesa for the purchase of all their right, title and estate in and to a certain tract of land hereinafter more particularly described, as that which was sold to Sr. Don Ysidoro de la Torré, hereinafter mentioned, and hearing that as the price offered to them by the said Shillaber was the sum of twenty thousand dollars, and having an interest in the said mine and lands of New Almaden, granted to Andres Castillero as aforesaid under the said registry of his discovery, and by title of colonization; and moreover, being the agent of the owners and workers of the said mine, most of whom resided out of California, and could not act for shemselves in the premises; and fearing that his and their interests would be seriously jeoparded in the unsettled condition of the laws, and courts, and society in California, in any controversy which might arise on any pretended adverse claim to the said mine and lands; and deeming it to the interest of himself and all other persons standing in his relation to the said mine and lands, under said circumstances to buy their peace, even from the most false and fraudulent pretenders to an adverse claim, and even at a large sum of money; did, in the name of the owners of the said mine and lands whose agent he was, although he had not authority from them therefor, but in the utmost good faith, and believing they would adopt his said act, offer the said widow and heirs of the said José Reyes Berreyesa the sum of thirty thousand dollars for their entire interest in the tract of land, which is hereinafter more particularly described as having been sold by the said widow and heirs to the said Ysidoro de la Torré: that afterwards, having ascertained that the said widow and heirs, or some of them, had actually made and entered into a contract with the said Shillaber, and signed an instrument of sale, conveying to him the tract of land for which this Defendant had made them the said offer, he refused to complete the said contract upon the said terms, as long as the said contract with the said Shillaber remained in force; and it was agreed between this Defendant and the said widow and heirs of the said José Reyes Berreyesa, that the said purchase should be subject to the contingency of the sale to the said Shillaber being annulled, and that this Defendant should not be called upon to pay the sum of

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thirty thousand dollars until the happening of said event, but whenever that contract was set aside or put out of the way to the satisfaction of this Defendant, the contract should be completed by the payment of the said sum of money on his part, and a conveyance of the said land on their's. That thereupon, as these Defendants are informed and believe, the said widow and heirs of the said José Reyes advising with James M. Jones, Esq., a practising lawyer, who resided in the Pueblo of San José, near the residence of the said Complainants, and who was the attorney of the said Complainants, executed a Power of Attorney in favor of the said Jones, giving him authority to institute a suit in their names, against the said Shillaber and others, in order to annul what they style in their said letter "a fraudulent sale "of the lands of the Rancho of San Vicente, belonging to us," (the Complainants) "in which pretended sale," they add, "the said Shil-"laber and his agents have caused persons not thereto authorized to "sign a deed of sale declaring that we" (the said Complainants) "have sold not only the said portion of the Rancho of San Vicente, "but likewise the lands of New Almaden, the mine itself, and the site "of its works, which do not belong to us" (the said Complainants,) "by any title;" that this letter of attorney, substantially and in all its material parts set forth and recited as above, was on the 7th day of November, A. D. 1849, signed by the said widow Zacharias, and the said heirs of the late José Reyes Berreyesa, and delivered to their said attorney, James M. Jones; that this defendant having before the date of the said letter of attorney, agreed as aforesaid to purchase the said tract of land from the said complainants, and being desirous for the reasons aforesaid of preventing the said Shillaber and his associates from acquiring any pretended adverse claim to the mine and lands of New Almaden, how false or fraudulent soever such claims might in fact be, certainly wished that the said complainants might succeed in annulling the said sale to the said Shillaber; but this defendant having made the said offer of purchase, which had been before the execution of the said Power of Attorney, accepted by the said widow and heirs, had no interest in procuring a recital in the said instrument, to the effect that the said widow and heirs did not claim title to the lands, mine and hacienda of New Almaden and did not procure such recital to be made; that this defendant does not remember whether he prepared a draft of the said letter of attorney to the said Jones, and believes he did not, but is very certain that if he did draft such a letter of attorney, the said recital was dictated to him by the said Berreyesas, who have declared to him over and over again, both before the year 1849, and afterwards, that they never claimed the said Mine or Hacienda by any title: and these defendants, Walkinshaw and Barron, say, that neither of them was in any manner cognizant of the said letter, nor do they know by whom it was drafted or

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written; that this defendant, Barron, arrived in California for the first time in March, 1850, and that this defendant, Walkinshaw, being interested with the said Shillaber in the said contract of sale, was directly opposed to all attempts on the part of the said widow and heirs to annul the same.

§37. And these Defendants further severally answering say, That after the foregoing occurrences, to wit: about the month of March, A. D. 1850, Ysidoro de la Torré, who had a short time before purchased a large interest in the Mine and lands of New Almaden, arrived in California from Mexico with full powers from the owners of said Mine and lands to take charge and possession of the same, and to make contracts and expend money on account thereof, to appoint agents and officers to superintend and manage the said Mine, and generally with full powers to work it on an extensive scale and conduct its affairs; whereby the Defendant Forbes was superceded in his powers and agency, and ceased to have any control over the affairs of the Mine, except as part owner thereof.

§38. And this Defendant Robert Walkinshaw further severally answering saith, and these Defendants, James A. Forbes and William E. Barron, believe it to be true, That on the arrival of the said Ysidoro, and the institution of a new agency for the Mine, this Defendant Walkinshaw, seeing that matters were to be placed on a new footing, and believing that the Mine was to be worked on a scale corresponding in magnitude with what he believed to be its great capabilities, and being a part owner thereof to the extent, as he claims, of three undivided twenty-fourth parts, by title derived from Andres Castillero, and considering it to be for his interest to put an end to litigation, did on the twelfth day of May, A. D. 1850, assign and transfer to the owners of the said Mine and lands claiming under the said Andres Castillero, all the right, title and estate to the lands above described, which he acquired by the said contract of sale, which had been assigned and transferred to him by the said Shillaber; with the understanding, nevertheless, that the said Ysidoro de la Torré would proceed to complete the sale made as aforesaid by the said widow and heirs to the said James Alexander Forbes, for and on account of the said owners of the New Almaden Mine.

§39. And this Defendant James Alexander Forbes, further severally answering saith, and these Defendants, Robert Walkinshaw and William E. Barron, believe it to be true, That when the said Ysidoro arrived in California, this Defendant represented to him the contract of sale which he had made with the said widow and heirs, and requested Don Ysidoro to carry it into execution, as he had authority to do under his powers, which the said Ysidoro consented to; and that accordingly as soon as the said Ysidoro ascertained that the Defendant Robert Walkinshaw was willing to surrender to the owners of the Mine of New

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Almaden the rights he had derived from the assignment to him of the said contract by the said Shillaber, he expressed his willingness to carry into execution the contract which this Defendant had made with the said widow and heirs; and thereupon, an estimate being made of the costs and expenses incurred in procuring the surrender of the contract which the said widow and heirs had made with the said Shillaber and other persons claiming under him, and the said widow and heirs agreeing to the said estimate at four thousand dollars, it was finally and fully agreed between the said Ysidoro de la Torré, for himself, and re presenting the owners of the said Mine, on the one part, and the said widow and heirs of the said José Reyes Berreyesa, deceased on the other part, that the last named parties, in consideration of the sum of twenty-six thousand dollars, to be paid by the said Ysidoro de la Torré, would sell and convey to him for his own benefit and that of his part owners of the Mine of New Almaden, all their right, title and estate in and to the tract of land before described in the contract of sale, made as aforesaid with the said Shillaber; and thereupon the said widow and all the other heirs of the said José Reyes Berreyesa, by the said José de los Santos Berreyesa, their agent and attorney, by them thereunto duly authorized, did on the 26th day of April, A. D. 1850, sign an instrument in writing, setting forth the said contract of sale, and conveying to the said Ysidoro de la Torré, for the uses aforesaid, the tract of land mentioned and described in their aforesaid contract with the said Theodore Shillaber.

§40. And this Defendant James Alexander Forbes further severally answering saith, and these Defendants, Robert Walkinshaw and William E. Barron, believe it to be true, that during the pendency of the litigation between the said widow and heirs of the said José Reyes deceased, and the said Shillaber, to procure the rescission of their said contract of sale with him, and before their said final agreement with the said Ysidoro de la Torré, this Defendant, on account of his said contract with the said widow and heirs, had advanced to the said widow the sum of $1,591,00, and to the said Nemecio the sum of $1,900.00, and to the said Ygnacio the sum of $450.00, and to the said Fernando the sum of $193.00, and to the said Santiago the sum of $810.00, and to the said José de los Santos the sum of $700.00, making in the aggregate the sum of five thousand six hundred and forty-four dollars, paid by the Defendant to the said several persons on account of his said contract with them, and by them and each of them accepted in part payment of the consideration thereof. And this Defendant further saith, that the said José de los Santos, when he signed the aforesaid contract of sale for himself and for his mother, and brothers and sisters, made an estimate of the money which this Defendant had paid on account of the said contract, and computed it at the aforesaid respective sums; which sums of money the said widow and heirs have to this day retained.

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§41. And these Defendants, James A. Forbes and Robert Walkinshaw, further severally answering, say, and this Defendant, William E. Barron, believes it to be true, that the said Ysidoro de la Torré, after the said contract of sale was made and signed, as aforesaid, by the said widow and heirs, tendered them the whole consideration money, and requested them to receive it, which they refused to do, for what reason these Defendants do not know, unless, as they believe, there had grown up in the said Berreyesa family, disputes and discord, in respect to the division which they were to make among themselves of the said purchase money.

§42. And these Defendants, James Alexander Forbes and Robert Walkinshaw, further severally answering, say, and this Defendant, William E. Barron, believes it to be true, that the said Defendant, Walkinshaw, in the year 1849, dissatisfied with the treatment he received from the owners of the mine and lands of New Almaden, and having, as he supposed, just cause for dissatisfaction, did associate with the said Theodore Shillaber in said contract of sale, made as aforesaid, between the said Shillaber of the one part, and the said widow and heirs of José Reyes deceased, of the other; and that the Defendant, Forbes, throughout the whole of the said contest, with the said Shillaber and his associates, and the owners of the mine, acted for the latter whose agent he was, and opposed and strenuously resisted the said Shillaber and all other persons, endeavoring to set up, or to acquire any pretence or claim of right adverse to his own, and that of the persons whom he represented; and that so far from there being any combination, confederacy or collusion, between these Defendants or any of them, for the purposes charged by the Complainants in their said bill of Complaint, or for any other purpose, they say, (and so does the Defendant, William E. Barron,) that the said Barron at that time had no interest either present or prospective in the said mine or lands, and was not during said transactions, and had never been in California, and did not arrive in California until the month of March, 1850, and did not acquire any interest in the said mine, or lands, until the month of May, 1855; and that these Defendants, Walkinshaw and Forbes, were directly opposed to each other, in the said attempt of the said Theodore Shillaber and others to wrest the possession of said mine and lands from the owners thereof claiming under Andres Castillero, and that the said Forbes successfully defeated all such attempts; and were directly opposed to each other in all treaties and negotiations with the said widow and heirs, for the purchase of their right and title to the said tract of land, sold by them, as aforesaid, first to the said Shillaber, and afterwards to the said De la Torré; and that the said opposition engendered such feelings of animosity in the mind of each to the other, that from the time of said occurrences to this day they have not been on speaking terms.

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§43. And these defendants Robert Walkinshaw and William E. Barron, further severally answering say, and this defendant, James A. Forbes believes it to be true; that they are with the other persons hereinafter named, the owners and proprietors of the said mine and lands of New Almaden, claiming the same under the titles thereto acquired as aforesaid by the said Andres Castillero, and that as such proprietors all the title and interest acquired as aforesaid, by the said Ysidoro de la Torré, by the conveyance made to him by the said Robert Walkinshaw, as well as that acquired by the contract of sale made as aforesaid, between the said Ysidoro, and the said widow and heirs of the said José Reyes Berreyesa, have enured to the benefit of the said Walkinshaw and Barron, and the other proprietors of the said mine and lands.

§44. And these defendants, Rob't Walkinshaw and Wm. E. Barron, further severally answering say, and this defendant James A. Forbes believes it to be true, that besides the said defendants Walkinshaw and Barron, there are other persons having an interest in the lands and mine of New Almaden, as proprietors and owners thereof in fee, by title derived from Andres Castillero, and that the said owners and proprietors are in possession of said mine and lands, and are as follows: Eustaquio Barron, of the City of Mexico, Eustaquio W. Barron, of Tepic, in the Republic of Mexico, Martin La Piedra, of said Tepic, Francisco Maria Ortiz, of Gaudalaxara, in the said Republic, and John Parrott and James R. Bolton, of the City of San Francisco, in this State; and that the said proprietors and those under whom they hold, made and entered into a contract, long before the institution of this suit, and the aforesaid action of ejectment, with the said Eustaquio Barron, and the said Eustaquio W. Barron and with William Forbes and Fernando Escandon, of the City of Mexico, and with the firm of William Gibbs & Co., of Lima in Peru, (the names of whose members these defendants know not, and therefore cannot set forth,) for the working of the said mine, and that the said mine is now and has been for a long time worked under said contract; that by theterms of the said contract the proprietors receive a certain proportion of the quicksilver yielded by the reduction of the ore of cinnabar dug out of the mine, and the said contractors the residue of such yield; and that said contract will not expire before the year 1862, and therefore, these defendants say, that the said proprietors and contractors have an interest in the matter in litigation in this cause, and should be made parties defendant therein.

§45. And the Defendant, James Alexander Forbes, further severally answering, saith: and these Defendants, Robert Walkinshaw and William E. Barron, believe it to be true, that he was at one time, to wit, in the year 1850, the owner in fee of two undivided twenty-fourth parts of the mine and lands of New Almaden, by title derived from Andres Castillero; and that thereafter,

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to wit, on the ninth day of August. A. D. 1850, he sold and conveyed one of the said parts to John Parrott, now a resident of the city of San Francisco, in this State, with a clause of general warranty; and that subsequently, to wit, on the twenty-ninth day of May, A. D., 1855, he sold and conveyed the remaining undivided twenty-fourth part of the said lands and mine to the Defendant, William E. Barron, without warranting the title; whereby this Defendant was divested of all title and estate in the said mine and lands of New Almaden, and surrendered his possession thereof; and further, that this Defendant is not now, and was not at the time of the institution of this suit, or of the said action of ejectment in any manner interested in the said mine and lands, except as warrantor of the part sold to Parrott, nor in any part of the premises mentioned by the Complainants in their said bill of complaint, or in their declaration in ejectment; and is not now interested in the same, except as such warrantor, and is not in the possession thereof, and does not claim title to the said lands, nor to any part thereof.

§46. And these Defendants further severally answering, say: that between the month of December, 1845, when Andres Castillero and his partners, were placed in possession of the said mine and lands of New Almaden, and the first day of May, 1852, these Defendants, with their co-proprietors and contractors, and the persons from whom they claim, expended, in working the said mine, reducing the ores taken therefrom, and improving the said lands, the full sum of ($978,114.11,) nine hundred and seventy-eight thousand, one hundred and fourteen dollars and eleven cents; and that the whole price of quicksilver extracted and sold during that time, together with the value of the whole amount then on hand unsold, was the sum of five hundred and seventy-eight thousand dollars, ($578,000,) as near as may be, thus showing that after working the said mine for nearly seven years, its proprietors and contractors were in debt, on account of the said mine, in the sum of four hundred thousand dollars; all of which was set forth in the answer filed on or about the fourth of May, 1852, in the United States District Court for the Northern District of California, to the Bill in Equity, filed by the said Complainants against these Defendants, Forbes and Wilkinshaw, and others, hereinafter mentioned, and as these Defendants believe, constituted one of the reasons why the Plaintiffs in the ejectment suit, to which the said Bill in Equity was auxiliary, suffered the said suit at law to slumber for so many years. And that the entire proceeds of the sales of quicksilver produced by said mine of New Almaden, from the month of December, A. D. 1845, to the present time,—a little more than ten years,—have not paid an interest equal to two per cent. per month on each year's excess of

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annual expenses over the annual receipts, on the supposition of a balance of accounts being struck at the end of each year, and the said monthly interest allowed for the succeeding year on the said excess of annual expenses over annual receipts; while the usual and current interest of the country during the same period, has ranged from ten per cent. per month to two per cent. per month, and has been at no time less than the last named sum.

§47. And these Defendants further severally answering, say: that sometime in the month of February, 1848, Mr. Alexander Forbes, as before stated, being largely interested in the mine and lands of New Almaden, as proprietor, claiming under the said titles of Andres Castillero, caused a survey of the same to be made by Chester S. Lyman, Esq., who was at that time Surveyor for the middle Department of Upper California, holding said office by commission from R. B. Mason, then Civil and Military Governor of California, for the purpose, among others, of fixing the dividing lines between said lands and those of his neighbors, the said widow and heirs of José Reyes Berreyesa; that the said widow and heirs were requested to attend said survey of the said dividing line, and to make known what they claimed as their lands, and where the said dividing line should be run; that the said widow Zacharias and some of the other Complainants, to wit: Fernando and José Encarnacion and Lorenzo Pineda, then married to Maria del Carmen Berreyesa, but now deceased, and also the said Nemecio, who was then living, but is now deceased, were present at the running of said dividing line, and pointed out the boundaries of their said rancho, and assisted in the said survey and in the establishment of the said line, and assented to the line so run off, measured and established, and agreed that it should ever after be considered as the true dividing line between the said Rancho of San Vicente and the lands of New Almaden; that there were present at the said survey and establishment of the said dividing line the widow and the above named heirs, Complainants, and the said Alexander Forbes and Fernando Alden, and Chester S. Lyman, the Surveyor, and various assistants and laborers; and this Defendant, James Alexander Forbes, says, that the said widow and heirs on the occasion aforesaid, and while the Surveyor was adjusting the position of the flags, for the purpose of running his lines, pointed out to him two hills on which the Surveyor's flags were placed, at the points designated on "Exhibit X" by the letters I and V, and told him that the dividing line between their rancho and the lands of New Almaden was correctly defined by the position of the said flags. And these Defendants further say, that in making the said survey the said proprietors of the mine and lands of New Almaden excluded a part of what they had a right to claim according to their

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limits as defined in the act of possession and concession, made as aforesaid to Andres Castillero, by Anto Maria Pico, Alcalde, and as defined in the colonization grant, made as aforesaid, to Andres Castillero by the President of Mexico; that such exclusion was made in favor of the widow and heirs of the said José Reyes Berreyesa; and that the said land so excluded by said survey was valley land, comprising some of the most fertile lands within the limits of the Rancho San Vicente, and also irrigable, and best suited to all purposes of pasturage and cultivation; and this exclusion was agreed to by said proprietors because they did not wish to deprive the said widow and heirs of any part of the land claimed by them as within the limits of their alleged grant, and least of all, of such as was suitable to the purposes of occupation, settlement, cultivation and pasturage; and because desiring to have permanently established boundaries, they agreed to such as the said widow and heirs pointed out and claimed, and declared themselves content with.

§48. And these Defendants further severally answering say, That the limits of the lands of New Almaden, surveyed by Chester S. Lyman, on the occasion aforesaid, are correctly delineated on the said Exhibit X, by the lines thereon shaded with green, and that the said lines, or so much of them as lie contiguous to the said Rancho of the Berreyesas, were those pointed out and established by the said widow and heirs, and by them agreed upon as a permanent dividing line between their said Rancho and the lands of New Almaden; and these Defendants further say, that the area included within the said survey is equal to two square leagues, and that it was laid out in that form to compensate for so much of the square area A B C D, as lies to the north of the line L I J; and these Defendants further say, that neither the said José Reyes Berreyesa, in his life time, nor his said widow and heirs at law, or any of them, since his death, was ever in possession, by virtue of any title or otherwise, of the land included in the limits of the survey of the lands of New Almaden, made by Chester S. Lyman, as aforesaid, and above described.

§49. And these Defendants further severally answering say, That ever since the month of December, A. D. 1845, these Defendants, (except James A. Forbes, who was in possession until he sold to the Defendant, Barron, as aforesaid,) with their co-proprietors, and the said contractors, and the persons under whom they claim title, have been in the possession of the said Mine of New Almaden, and of the Hacienda so marked on Exhibit "X," and of the said square area, E F G H, except as hereinafter mentioned; and from the 20th day of May, A. D. 1846, in the possession of the square area, A B C D, except as hereinafter mentioned; that during the whole of that time they have been engaged in working the said Mine, and improving the

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said lands, at a vast expense and risk; that they have taken from said Mine large quantities of cinnabar and reduced the same to quicksilver, and exported large quantities of that metal from this State to be sold in foreign markets, there being in this State, and in the United States, a market for only a very small proportion of what they have produced; that the process of reducing the ores requires a great deal of fuel and some lime; that all the fuel which has been used by these Defendants, (except the Defendant, Walkinshaw) their co-proprietors, and the said contractors and the persons under whom they claim, for the said purposes, or for any other purpose whatever, has been, since the month of July, 1850, purchased by their agents at the Hacienda from persons who have procured the same from the adjacent Ranchos, and brought it to the Hacienda to sell; that these Defendants believe much of the wood they have used has been cut on the Rancho of the Complainants, within the limits mentioned and described in their alleged grant as defined in this answer, but that none of it was cut by these Defendants, nor by any of them, or by their or any of their agents, nor by their authority, direction or permission; but these Defendants are informed and believe, and so say, that a very large proportion, if not all, of the wood which they have purchased, has been cut by certain persons under contract with the said widow and heirs of José Reyes, deceased, complainants, and by their permission; and that the said widow and many of the said heirs have, during the last five years and more, frequently been to the Hacienda to ascertain how much wood had been delivered by certain persons, and how much money had been paid for it, in order that they might ascertain what was due to them under their contracts with such persons; and that neither before the month of July, 1850, nor at any other time, have these Defendants, or any of them, (except the Defendant Walkinshaw, as hereinafter stated,) cut down or taken any growing or other trees, outside of the limits of their land as surveyed by the said Lyman; that sometime in the year 1848, and thence to the year 1850, some lime was taken out of a quarry whose locality is designated on Exhibit X by the point W, and in very small quantities for the purposes of the Mine; that after the year 1850, and up to the year 1853, lime was taken from quarries whose localities are respectively designated Y and Z, on the said Exhibit X, for the purposes of the Mine; that never at any time have these Defendants, or any of them, dug or taken, or caused to be dug or taken, any lime at any other place or places, either on their own lands of Almaden or on the lands claimed by the said complainants; but that since the year 1853, they have purchased whatever lime they needed, and paid therefor in cash, it being brought to the Hacienda already burnt, and put up in casks, and there and in that condition sold to these Defendants.

§50. And these Defendants further severally answering, say: that

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although they claim title to the tract of land sold as aforesaid, by the said widow and some of the other complainants, to the said Shillaber, and afterwards by the said widow and the heirs of the said José Reyes deceased, to the said Ysidoro de la Torré, they have been wrongfully and unlawfully deprived of the possession of all that part of the said tract, which lies outside of the lines of Lyman's said survey, except a small piece of about fifty acres located around the house of the Defendant, Walkinshaw, indicated by name on the *Exhibit X*, and that the Complainants have been in possession of the same for several years, and do now possess it.

§51. And the said Defendant, Robert Walkinshaw, admits that he has used a portion of the growing trees on the land sold as aforesaid, by some of the Complainants to the said Shillaber and to the said de la Torré, outside the limits of Lyman's said survey, and within the limits of the land called for, by the alleged grant of Alvarado, to the said José Reyes; but he says, that the timber so cut was used for building fences and other purposes about a farm, and for fire wood; and that he hath the right to possess said land and use said timber, under and by virtue of his titles thereto set forth in this answer; and he further saith, and so say the other Defendants, that he has not cut down, or used any growing timber on the said land or elsewhere by the order or direction of the said Forbes and Barron, or either of them, nor as their agents, or to be used in or about said mine.

§52. And these Defendants further severally answering, say: as to so much of the said Complainants' bill of complaint as charges that the proceeds of the sales of quicksilver amount to the average sum of three thousand dollars per day, or thereabout, they deny that the same is true; and they deny that they fraudulently retain the proceeds or a greater part of the proceeds of said quicksilver beyond the jurisdiction of this Court; and they aver that the parts of said proceeds corresponding to their respective interests in the said mine and lands are regularly distributed and paid them in the due course of the business of the negotiation, and by them retained in this State; and they deny that they have not visible property, means or resources of any kind within the State of California, sufficient in amount and value to satisfy or discharge the damages which the said Complainants are justly entitled to recover of them, on account of any acts of trespass, waste and destruction, ever by them committed on any lands belonging to the Complainants. And these Defendants aver, that the said Barron, and the said James R. Bolton, and the said John Parrott, all of whom reside in the city of San Francisco, State of California, are the owners and possessors of a large amount of very valuable and highly improved land, and have, besides a considerable sum of money invested in their business, and the whole of the real estate so by them owned in San Francisco is worth, according to the best of the information,

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knowledge and belief of these Defendants about one million of dollars; and these Defendants further aver that the other proprietors and contractors before named, are worth in the aggregate at least five millions of dollars, exclusive of their interest in the mine and lands of New Almaden, and that although they do not reside in this State, but live and have their fortunes elsewhere, they are amply able to respond to any damages which could be recovered of them by the Complainants, even supposing all the statements and allegations of the said complaint to be true. And these Defendants further say, that at the time of filing their bill of complaint in this cause, and instituting the action of ejectment therein mentioned, the said Complainants well knew that the said John Parrott, and the other proprietors and contractors were interested in the said mine and lands and had been in the possession thereof for several years, working the said mine and exporting and selling a large part of its products.

§53. And these Defendants further severally answering, say: they deny that the said Complainants have sustained or will sustain any injury, irreparable or other, from the working of said mine of New Almaden by these Defendants, their co-proprietors, and the said contractors, or any of them, even supposing all the statements and charges in the said bill of complaint regarding the title of the Complainants, and the trespasses by the Defendants to be true; and they further deny that they, or any, or either of them, or that their co-proprietors, and the said contractors, or any or either of them, have ever, at any time, worked the said mine of New Almaden, or disposed of the proceeds of sales of the metal yielded thereby, with any view to defraud the said Complainants of their just rights, or to place said proceeds beyond the jurisdiction of the Courts of this State, or of the United States; or with the design of avoiding the payment of any damages which the said Complainants might possibly recover of them, on account of said alleged acts of trespass or destruction; but on the contrary they aver, that these Defendants and the other owners of the mine and lands of New Almaden, and the said contractors, have always worked and improved the same in the manner that any other owner, having full confidence in his title, and desiring to develop the resources of such property, would work and improve said mine and lands; that much the larger portion of the quicksilver procured from the said mine has been sent abroad for sale, because there is not in the United States a market for any except a small part thereof; and that the proceeds of the sales of quicksilver have always been distributed among the owners and contractors in dividends corresponding to their respective shares and interests.

§54. And these Defendants further severally answering, say: that the matters of defence which the said Complainants have anticipated in their said bill, and endeavored to avoid, are

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already sufficiently set up in this answer, and as to the matters of avoidance which the said Complainants have set forth in their said complaint, these Defendants say:

§55. That the Alcalde, before whom the aforesaid registry of the discovery of the said mine was made, (called in the Complainants' said bill of complaint, a "pretended denouncement,") did have jurisdiction of the matter;

§56. That the said Castillero did disclose the names of his associates, by a writing of partnership, dated Nov. 2nd, in the year 1845, and authenticated by the Prefect of the Second District, Don Manuel Castro, the original document being deposited in the archives of the Partido, and a certified copy thereof signed by said Manuel Castro, the said Prefect, and by Antonio Maria Pico, the Alcalde before whom the said registry of the said discovery was made, the said certified copy being dated December 8th, 1845, and annexed to and forming a part of the records of said proceedings of registration of discovery and juridical possession.

§57. That the names of said associates of the said Castillero so disclosed, were José Castro, Secundino Robles, Teodoro Robles, and Friar José Maria del Refugio Snares del Real; that neither of said associates, José Castro, Secundino Robles, and Teodoro Robles, was at the time of such registration, had been previously, or has since become, "either a regular of religious orders, or a secular ecclesiastic;" that these Defendants have been informed, and believe it to be true, that the said Friar José M. R. S. del Real, to whom by said writing of partnership, the aforesaid Castillero made a voluntary grant of four shares as a perpetual donation, was then a Regular of Religious Orders, and that if, by the ordinances on the subject, the said Friar José M. R. S. del Real who was a regular, could not acquire a title in mines, then the said Andres Castillero did not part with the shares which he attempted to so donate to the said Friar José M. R. S. del Real.

§58. That the said Castillero did sink a trial pit within ninety days, and have the same inspected according to the then existing law.

§59. That if said Castillero did not contribute to the revenues of the Mexican Government by the payment of a "percentum of the proceeds of said mine," it was for the reason that the then existing laws of Mexico did not reserve thereto any percentum of the proceeds of said mine, but on the contrary, offered a premium or reward for the discovery and working of Quicksilver mines.

§60. That neither the said Castillero nor these Defendants have "ever paid to the said Berreyesa, deceased, his widow or heirs, or to any one for them "damages resulting from the working of said mine, nor the use of said land nor the timber

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thereon," for the reason that no such damages have ever been lawfully assessed, nor has any demand for such assessment ever been made, either upon said Castillero or upon either or any of these Defendants; for the reason that no damages have ever resulted to the said Berreyesa, deceased, to his widow or heirs, from the working of said mines, and the use of the land and the timber thereon, but on the contrary large pecuniary advantages; for the further reason that said mine is not on any land now belonging to, or which ever did belong to said Berreyesa, or his widow or heirs; and for the further reason that neither the said Castillero, or these Defendants, or either or any of them, has ever used any land or the timber thereon, which ever did belong to or does now belong to said Berreyesa, deceased, his widow or heirs.

§61. And these Defendants further say, that the pertinencies, or shares of said mine were measured off as required by law, to wit: three thousand varas of land in all directions, and the juridical possession thereof given to the said Castillero, the same being made and executed by said Alcalde of First Nomination of San Jose, Guadalupe, acting with two assisting witnesses;

§62. That the "Junta de Fomento y Administrativa de mineria" did have jurisdiction or supervisory power in matters of denouncement of mines where the person denouncing or making registry, applied to the Government to aid, contract for, or habilitate such mine; that said Junta, together with the President of Mexico, did confirm the said registry of discovery of said Castillero, and enter into a contract with him for supplying and working said mine; and they deny that the jurisdiction of said Junta, either appellate or original, was limited to a district not more than twenty-five leagues from the City of Mexico; and they further deny that they have ever claimed that said Junta exercised appellate jurisdiction in this case over any litigated question, or that any appeal was ever taken from the action of said Alcalde of San Jose to said Junta;

§63. And these Defendants further say, that the document of grant claimed by the Defendants to have been made to said Castillero by the President of Mexico, of two square leagues of land on his mining possession, (called in said complainants' bill of complaint "an alleged grant from the President of Mexico,") is a grant of said two leagues of land, and they deny that it does not purport to be a grant, and that it is a mere reference of the matter to the Governor of California, recommending him to act thereon in pursuance to the colonization laws;" and they say that said document is not only a grant or title of said two leagues of land to said Castillero, but that it also contains an order to the Governor of California to put the said Castillero into possession of said land so granted, and that said document was delivered by the proper authority to said Castillero, as the proper

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evidence of his title to said land; that these Defendants believe that said document was presented to the *de facto* Governor of California; but if not so presented, the failure to so present it necessarily and unavoidably resulted from the operations of the war between the United States and the Republic of Mexico, and the great distance between the city of Mexico and the Department of California, by which said Castillero and his agents were prevented from presenting said documents to said Governor in time for him to act in the premises before the occupation of said Department of California by the military forces of the United States; and these defendants deny that said document of grant to Castillero, and order of possession to said Governor by the said President of Mexico, (erroneously described in said complainants' bill of complaint as a reference or recommendation,) was "procured so to be made through the fraudulent concealment of the fact that said Mine was situate in lands claimed as of the ranch of said J. R. Berreyesa," or through the representations (called "false and fraudulent" in complainants' said bill of complaint) of the said Castillero, and of these Defendants, that said mine was in the Mission of Santa Clara, and not in the lands belonging to said Berreyesa; but they severally believe it to be true, and therefore so say, that the said Castillero, in asking for said grant, truly and correctly represented the facts of the case, to wit: that in denonncing and registering said Mine, he had represented it to be on the lands of said José Reyes, he, the said José Reyes, having falsely and fraudulently represented himself to said Castillero as the owner of said lands, under a grant of two square leagues to him by Governor Micheltorena, whereas said grant was for only one league, and had been fraudulently changed and altered by a forgery to two leagues by said José Reyes; and these Defendants severally believe it to be true, and so say, that the said President of Mexico, at the time of deciding upon said Castillero's petition for said grant of land, had before him full and correct information with respect to the character and extent of any grant or grants of land previously made, or pretended to have been made by the local authorities in California to said Berreyesa, from the circumstantial reports which the Governors of California were required by the 9th Article of the Regulations of 1828, to make to the Supreme Government every three months, of all lands by them conceded or granted, and also particularly from the said Governor Micheltorena, who, these Defendants are informed and believe, was then in the city of Mexico and in communication with the Supreme Government, and was called upon by said Castillero for information on this particular matter; and these Defendants further say, that said Castillero, in describing in general terms the locality or position of the mine by him discovered and registered as being "in the Mission of Santa Clara," and as being "at the distance of five leagues from this Mission to the west," did

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so correctly describe in general terms the locality or position of said mine; and these Defendants aver that said mine is situate in the lands formerly designated, marked out and generally known and understood as Mission lands of the Mission of Santa Clara; and they deny that said Castillero, in so describing the locality of the mine by him discovered, either deceived or iutended to deceive the said Junta, or the said President of Mexico, or any other person whomsoever, or misrepresented or intended to misrepresent the positiòn or locality of said mine by him discovered, or the character or ownership of the lands in which said mine was situate;

§64. And these Defendants further deny it to be true, as alleged in said complainants' bill of complaints, that neither the said widow and heirs, (meaning the widow and heirs of José Reyes Berreyesa,) nor either of them, have ever executed and delivered to these defend ants, or either of them, any conveyence whatever of said land or mine; and they further deny it to be true, as alleged in said bill of complaint, that neither have these Defendants, or either of them, ever paid to said widow and heirs, or either of them, any money or other consideration for such conveyances (called in said bill of complaint "pretended conveyance"); and they say that the true facts of the case are as elsewhere particularly set forth and shown in this their answer;

§65. And these Defendants further deny it to be true, as alleged in said bill of complaint, that upon the earnest solicitation of these Defendants, and their promise to pay thirty thousand dollars therefor, some of said heirs were induced to sign an instrument prepared by these Defendants, purporting to convey the interest of said widow and heirs in said lands to one Theodore Shillaber for or on account of these Defendants; and they say that the true facts of the case are elsewhere set forth and shown in this their answer;

§66. And these Defendants further deny it to be true, as set forth in said bill of complaint, "that said instrument" (meaning the convey ance to said Theodore Shillaber) "was never, in fact, delivered, but was placed in the desk of a third person, and under his custody"; and they deny that said instrument was even taken from the custody of any such third person "without the knowledge or consent of said widow and heirs, or either of them," and "that it was clandestinely and fraudulently abstracted by the said Theodore Shillaber from such custody," and that said Shillaber was then or at any time the agent or confederate of these Defendants, or either of them, except so far as he was associated with the Defendant Walkinshaw in the purchase hereinbefore set forth and fully shown; and they deny that these Defendants, or either of them, did as alleged in said bill of complaint, "falsely and fraudulently pretend to be indignant at the conduct of said Shillaber in abstracting said instrument"; and they deny, as they have already denied, that said Shillaber, or any person employed by said Shillaber, or any person acting for these

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Defendants, or either of them, or any person whomsoever, ever did abstract said instrument, as is in said bill of complaint alleged; and they deny that they, or either of them, "represented to said widow and heirs, that, for the protection of their rights in the matter, it was necessary to cause to be instituted legal proceedings for the purpose of setting aside or annulling said instrument," but they admit that this Defendant Forbes did offer, in the manner and terms hereinbefore set forth and shown, to purchase certain lands as hereinbefore described, of the said widow and heirs, in case said sale to said Shillaber should be given up, cancelled, set aside, or annulled;

§67. And these Defendants further deny that they, or either of them, ever offered to indemnify said widow and heirs against the payment of all and any costs in that behalf, as alleged in said bill of complaint; and they deny that the Defendants Barron and Walkinshaw, or either of them, ever drafted a letter of attorney for the purpose of authorizing James M. Jones, Esq., to commence or prosecute said action, or for any other purpose; and the Defendant Forbes has no recollection of having ever drafted such a letter of attorney, and believes that he never did draft such letter; and these Defendants deny that said letter of attorney was drafted secretly, or for the fraudulent purpose of procuring the signatures of said widow and heirs, or either of them, to a written instrument in which they are represented as disclaiming all title to said lands and mine, or to any other written instrument whatsoever;

§68. And these Defendants further severally answering say, they have been informed, and believe it to be true, and therefore so say, that the said widow and heirs employed the said James M. Jones as their attorney to set aside the said conveyance to the said Shillaber, and, for that purpose, gave him a letter of attorney, in which they disclaimed all title to the lands and mine of New Almaden, and set forth that said lands and mine of New Almaden did not belong to them, the said widow and heirs, by any title; that said letter of attorney was written in the Spanish language, that it was read to said widow and heirs, and that they were fully advised of its contents; that Lorenzo Pineda, the son-in-law of the said widow, and husband of Maria del Carmen, one of said heirs and one of the complainants in this suit, was particularly active in getting up said letter of attorney, and then and there read and explained said letter of attorney to these complainants;

§69. And these Defendants further severally answering, say: that said letter of attorney was given to said Jones after the defendant, Forbes, had agreed with the Complainants for the purchase of the interests of the Complainants in the lands west of Alamitos creek, as herein before particularly described and set forth, and that said letter of attorney was given for the purpose of carrying into effect such agreement of sale and purchase between the Compiainants and Defendant, Forbes,

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by annulling or setting aside the aforesaid instrument of sale by the said Shillaber; that the said widow and heirs in executing said letter of attorney to said Jones, were fully advised and made acquainted with its contents, and especially were they advised and made acquainted with the recital of clauses by which they disclaimed all title to the lands and mine of New Almaden, that said widow and heirs did not then pretend to claim said land and mine of New Almaden, and that said widow has since frequently disclaimed all title to said lands and mine of New Almaden; and these Defendants severally deny that said recital in said letter of attorney, or any part thereof was false, but on the contrary, they say that said recital was and is true; and they further deny that said widow and heirs, or either of them executed said letter of attorney, without any knowledge of said recital; and they further deny that said widow and heirs executed said letter of attorney, solely for the purpose of delivering it to said Jones; and they further deny, that they, or either of them retained said letter of attorney, in their own possession, either fraudulently or otherwise; and they further deny that there was any fraudulent scheme, between them and the other Defendants, or between them and any other person whomsoever, of depriving said widow and heirs of their just rights or interests in said property, as in said complaint alleged, or of depriving them or either of them of any just right or interest in any property whatsoever. And these Defendants deny that this "said letter of attorney was not read to said widow and heirs," as alleged in said bill of complaint; and they further deny that said widow and heirs were advised of its contents only so far as it empowered said Jones to commence and prosecute said action; and they further deny that the said widow and heirs executed said letter of attorney without any knowledge of the recital to the effect that the mine and lands of Almaden did not belong to them by any title.

§70. And this Defendant, James A. Forbes, further severally answering, says: and these Defendants, William E. Barron and Robert Walkinshaw, believe it to be true, that both before and after said survey of Lyman, and even during the pendency of much harrassing litigation against the owners of the mine and lands of New Almaden, into which the said widow and heirs have been seduced by the false and fraudulent representations of interested speculators, who by all manner of fraud and artifice, and for their own purposes of speculation and plunder, have endeavored to poison the minds of the said Berreyesas against the owners of New Almaden, the said widow hath often declared that she never claimed the New Almaden mine, or the hacienda, and never supposed that she had any interest in, or title to, the minerals or to the said hacienda; and that the litigation on that account was entirely against her wishes; but that the said widow seemed to be under the influence of some of her sons, who, being violent, wicked and corrupt men, are willing instruments in the hands of any

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speculator in law suits, and ever ready to repudiate their most solemn contracts, and to enter into any others which may be proposed to them, promising pecuniary advantage;

§71. And these Defendants further severally answering say, that on the 26th day of August, A. D. 1850, the complainants Zacharias, widow of José Reyes, deceased, Ignacio, Santiago, José de los Santos, Nemecio, Francisco, Fernando, Maria del Carmen and her husband Lorenzo Pineda, Loreto and her husband Juan Bojorques, Madalena and her husband Maximo Fernandez, and Encarnacion, by his guardian, Wm. R. Bassham, brought an action against these Defendants, James A. Forbes and Robert Walkinshaw, in the district Court of the Third Judicial District of the State of California, in and for the county of Santa Clara; and in their complaint in the said action, they stated that their said Rancho of San Vicente is bounded on the west by the Rancho de los Capitancillos, which boundary commences at the junction of the Arroyo Alamitos and the Arroyo Seco, and runs thence southwardly, passing the hills or *Lomita* in the centre of the cañada, towards the east, to the Sierra, and alleged that the Defendants had trespassed on their said lands by cutting and carrying away the wood, timber and limestone on the said land, and claimed damages therefor in the sum of twenty thousand dollars; that the plaintiffs in said action did not claim as the western boundary of their said Rancho the line which they have falsely and fraudulently alleged, in their said complaint in this cause, to be the western boundary of said Rancho, and did not claim any damages against said Defendants for any alleged trespass in digging cinnabar, and carrying of the proceeds, and that the western boundary of said Rancho, as described by the said Plaintiffs in the complaint filed as aforesaid, on the 26th day of August, 1850, would not include the mine of New Almaden in the lands so claimed as the lands of the said Berreyesa, how far soever said line might be extended.

§72. And these Defendants further severally answering say, that after the aforesaid suit was instituted, and an order of survey obtained from the court, and an actual survey made of the lands claimed by said plaintiffs, and upon which the said complaint alleged that the alleged said Defendants had committed the aforesaid alleged acts of trespass,—to wit, on the 30th day of September, A. D. 1850,—the plaintiffs in said action, except the plaintiff, Ignacio, together with one Richard Roman and one James Hepburn, and one Charles V. Stuart, brought an action of ejectment in the said District Court, within and for the said County of Santa Clara, against Isidoro de la Torré of Mazatlan, in Mexico, Alexander Forbes and William Barron and Eustaquio Barron of Tepic, in the Republic of Mexico, and John Parrott, of the City of San Francisco, in the State of California, and these defendants, James A. Forbes and Robert Walkinshaw; and in their complaint in the said action, they stated that their said Rancho of San

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Vicente is bounded on the west by a line drawn from the junction of the Arroyo Seco, and the Arroyo de los Alamitos, thence south by the eastern brow or slope of the hills in the centre of the valley to the Sierra, which is a different line from that stated in their aforesaid action of trespass, and would include the New Almaden Mine, which the other would uot: and they alleged that the defendants in the year 1845 entered upon the said land, and had ever since been in possession thereof, and had committed thereon divers acts of trespass by opening and working quicksilver, lime, and other mines, and more particularly the mine of New Almaden, by which said several trespasses the plaintiffs alleged they had been damaged in the sum of one million of dollars; and that the summonses in the said cause were served on these defendants, Forbes and Walkinshaw, on the 11th day of October, A. D. 1850, and on John Parrott on the 7th day of November, A. D. 1850, and on the other Defendants by publication for six months; that on the 23d day of January, A. D. 1851, the plaintiffs in the said suit filed a petition praying for the appointment of a receiver, to take charge of the accruing profits of said mine, and retain them until the question of title could be determined at law, which was heard and granted on the next day, without notice to the Defendants or their attorneys, and John W. Geary, formerly of San Francisco, was appointed such Receiver; and that said order was made by the Hon. William R. Turner, Judge of the eighth Judicial District, of the State of California, who happened to be then holding Court for the Hon. John H. Watson, the Judge of the Third Judicial District, as he, the said Judge Turner, supposed, with the consent of the Defendants, which was not true—that the said order was subsequently, to wit, on the 22d day of February, A. D. 1851, revoked and set aside, and that said cause was afterwards, to wit, on or about the 28th day of April, A. D. 1851, by order of the said District Court transferred to the United States District Court for the Northern District of California.

§73. And these Defendants further severally answering say, that after the aforesaid cause was transferred to the District Court of the United States, the plaintiffs in the said cause filed a bill of complaint in said Court, sitting as a court of equity, in which said bill the complainants alleged the pendency of the said action of ejectment, and charging the Defendants in ejectment with having succeeded by means of various pretences and subterfuges in causing great delay in the progress of said action, and with having taken and continuing to take great quantities of quicksilver from the said land, prayed for an injunction and Receiver, for the purposes and on the grounds that the same are prayed for in this cause; and that thereupon, on motion and notice, and on the said complaint and the Defendant's affidavit, and after full argument, the said motion was denied on the —— day of —— A. D. 1852.

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§74. And these defendants further severally answering say, that after the said decree was made, denying the motion of the complainants for an injunction and Receiver, the said complainants, instead of being thereby stimulated to greater energy and industry in preparing their said action at law for trial, and having their title to the said mine and land established and the Defendants ejected therefrom, and the said alleged acts of trespass and destruction and vast irreparable injury stopped, have suffered the said action of ejectment to slumber for years, and have not taken one single step to bring the same to trial from that time to the present day, and have not sought to have their right or title decided by law; that meanwhile the said complainants have seen these Defendants expend vast sums of money in building houses, roads and bridges, and improving and ornamenting the lands around the Hacienda, and in erecting furnaces for the reduction of the ores of quicksilver, and have seen these Defendants exporting large quantities of quicksilver from this State and selling some therein, and making many valuable and permanent improvements in the mine and on the lands of New Almaden, thereby showing how false was their alleged intention of testing their right at law, and how false their charge against the Defendants in ejectment of resorting to subterfuges for the purpose of delaying the trial at law, that they, the said Defendants. might continue to commit the said acts of trespass and destruction, to the irreparable injury of the Plaintiffs; and thereby further showing what these Defendants always believed, and now aver to be the truth, that the said complainants have never desired to have their rights to the said lands and mine of New Almaden, against that of these Defendants, tried at law; but that they, with many instigators and confederates, who, for the porposes of speculation, have purchased large interests in said Rancho of San Vicente, and paid for the same with very small pecuniary consideration, but with large promises of instituting law suits against the Defendants and recovering heavy damages, and with many professions of their peculiar qualifications for the conduct of litigation in California, (not meaning any of their solicitors or attorneys,) have, from time to time, and as often as one sett of instigators, confederates and speculators may have sold out to a new sett, first instituted an action of ejectment against these Defendants, and then filed a bill in chancery ancillary thereto, containing the same statements, and making the same charges. and concluding with the same prayer as this bill, for the purpose of exacting money from the Defendants in the purchase of their peace, or for the purpose of selling out on the streets, at a higher price, their shares in the suit at law; and these Defendants aver and charge it to be true, and are ready to establish it by proof, that such has

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been the character of the litigation by the said complainants and their confederates, against these Defendants, for the last six years.

§75. And these Defendants further severally answering say, that, on the 30th day of September, A. D. 1852, there was filed in the name of Andres Castillero, before the said United States Board of Land Commissioners, a claim to the mine and lands of New Almaden, by virtue of the title acquired by the said acts of registry, concession, and juridical possession; and also a claim to two square leagues of land around the mine, by virtue of the concession made by the President of Mexico to the claimant, as a colonist; and afterwards, to wit, on the 8th day of January, 1856, the said Board made a decree. confirming the claimant's title to the mine and lands, under the said acts of registry, concession, and juridical possession, and rejecting his claim under the colonization grant; which decree is not final. And these Defendants further say, they are advised and believe, that when the said claims shall be heard on the appeal which hath been taken from said decree, so much of said decree as rejects the claim founded on the colonization grant will be held to be erroneous, and reversed, and the said claim confirmed. And these defendants further say, that whatever benefit or advantage hath accrued or can accrue from the said confirmation, hath enured to their benefit, and the benefit of their co-proprietors.

§76. And these Defendants further severally answering say, they deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing, in the said complainants' said bill of complaint contained, material or necessary for these Defendants to make answer unto, and not herein and hereby already well and sufficiently answered or confessed, traversed and avoided or denied, is true to the knowledge or belief of these Defendants; all which matters and things these Defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct; and humbly pray to be dismissed hence with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCH'D. C. PEACHY,
Solicitor of the Defendants.

San Francisco, February 11th, 1856.

United States of America,
State of California. } Sct.

The Defendants James Alexander Forbes and Robert Walkinshaw named in the foregoing answer, being duly sworn severally

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depose and say that they have read the foregoing answer and are acquainted with its contents, and that the same is true of their own knowledge, except as to the matters and things therein stated on their information and belief, and that as to those matters they believe it to be true.

JAS. ALEX. FORBES,
ROBERT WALKINSHAW.

Sworn to and subscribed before me this 11th day of February, A. D. 1856.

GEO. PEN. JOHNSTON,
Clerk.

[Endorsed.]
Filed February 11th A. D. 1856.
GEO. PEN. JOHNSTON.
Clerk.

DEPOSITION OF JOSÉ FERNANDEZ.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, Nov. 6, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came José Fernandez, a witness produced on behalf of the Claimant in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by C. Palmer, a sworn interpreter.

PRESENT: The U. S. Attorney by A. P. Crittenden and Edmund Randolph; A. C. Peachy for Claimant.

QUESTIONS BY ATTORNEY FOR CLAIMANT.

Question 1.—Your name, age, and place of residence?
Answer 1.—José Fernandez; 58; the Mission of Santa Clara.
Question 2.—How long have you resided in California?
Answer 2.—Forty years.

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Question 3.—How long have you resided in and about the Pueblo of San José?

Answer 3.—This last time I have resided between San José and Santa Clara since the year 1836.

Question 4.—What public office, if any, have you held in either of said places, or elsewhere in California?

Answer 4.—I have been sometimes Justice of the Peace ("Juez de Paz") in the Pueblo of San José, and I have also upon various occasions been "Escribano del Jusgado."

Question 5.—Did you hold any office in the year 1845, if so, what office?

Answer 5.—I was "Scindico del Jusgado" and "Escribano" of the Court of San José in 1845.

Question 6.—Who was Alcalde of the Pueblo of San José in 1845?

Answer 6.—Antonio Maria Pico.

Question 7.—Who in 1846?

Answer 7.—Dolores Pachecos; I was "Juez Suplente" in 1846.

Question 8.—Do you know Pedro Chaboya?

Answer 8.—I do.

Question 9.—Do you know his handwriting?

Answer 9.—I do.

Question 10.—By what means do you know it?

Answer 10.—Because I have seen him write his name; I believe that is all he knows how to write.

Question 11.—Is Chaboya now living?

Answer 11.—He is now living.

Ques. 12.—Where is he living?

Ans. 12.—About a league from the Pueblo de San José.

Ques. 13.—Look at the document now shown you marked "A. B." to be annexed to your deposition, and say if you know in whose handwriting is said instrument, and if the signature of Pedro Chaboya thereon appearing is the genuine signature of Pedro Chaboya. This question applies to the signature wherever it occurs in said document.

Ans. 13.—The whole document is in the handwriting of Salvio Pacheco; the signatures of Pedro Chaboya, which appear in four places on said document, are his genuine signatures.

(Question and answer objected to as incompetent to prove the execution of the document by Pedro Chaboya, the document being in the handwriting of another person, Chaboya ought to be called to prove that the writing was on the paper at the time that he signed it, and that the said writing on the paper was of the date which it purported to be.)

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Ques. 14.—Are you acquainted with Manuel Castro and Antonio Maria Pico; do you know their handwriting and their signatures, and how do you know them?

Ans. 14.—I know them; I know their handwriting and their signatures; I was with Antonio Maria Pico as "Escribiente del Jusgado," in San José, and I have in my possession a document from Manuel Castro which he sent to me appointing me "Juez Suplente." My means of knowing their handwriting were these.

Ques. 15.—Examine the document now shown you marked "C. D.," and state if the signatures of Manual Castro and Antonio Maria Pico, appearing on the third page of said document are their original signatures.

Ans. 15.—I have examined the document referred to, and in my belief, they are the genuine signatures of Manuel Castro and Antonio Maria Pico.

Ques. 16.—Do you know in whose handwriting is the body of the document appearing on the 1st, 2d and 3d pages, which is signed by Manuel Castro and Antonio Maria Pico; if yea, state whose it is?

Ans. 16.—I cannot tell to a certainty whose handwriting it is; it appears to be the handwriting of Gutierrez, but I cannot tell to a certainty.

(The same objection to the questions and answer in regard to signatures on this document as were made to question and answer No. 13, in regard to the signature of Chaboya.)

Examination adjourned until 2 P. M.

Examination adjourned until to-morrow, Nov. 7, at 11 A. M.

San Francisco, November 7, 1858.

Examination of José Fernandez, a witness produced on behalf of the Claimant.

Mr. Palmer not being present, Richard Tobin sworn as interpreter.

Present: U. S. Attorney, by A. P. Crittenden, and E. Randolph, Esqrs.; A. C. Peachy, for Claimant.

Ques. 17.—Look at the document produced by S. O. Houghton, a witness examined on behalf of Claimant on the 23d October, 1858, being the document referred to in his third answer, and state if your ever

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saw that document before; if you are acquainted with the handwriting of the bodies of the instruments contained in said document, with the signatures to the same, with your means of knowing such handwriting and signatures.

(The U. S. Attorney insists upon having certain answers and questions written down in Spanish as well as English. Agreed to.)

Ans. 17.—I know the document; I cannot say positively in whose handwriting it is; I know the signatures which are at the end of the document, they are those of Antonio Suñol, José Noriega, and Antonio Maria Pico; I know the handwriting of the decree; it is Salvio Pacheco's; the signature to the Decree is that of Dolores Pacheco; I think that the handwriting of the petition is that of Benito Diaz, which is the first paper in the document; the signature to said petition is that of José Castro. I have seen this document before; I had it in my hands in the Court at the Pueblo in the year 1845, and in the year 1849 while I was Alcalde; I do not remember whether the paper which I call the petition was with the other instruments when I had them in my hands in the year 1849. When I had them in the year 1845, I am sure it was not; the paper which I call the petition is signed by José Castro, and upon which is the Decree signed by Dolores Pacheco; I think that the handwriting of and signature to the second paper is that of Don Andres Castillero; I think the signature to the third paper is also that of Don Andres Castillero; I do not know in whose handwriting the body of the paper is; the last paper appears to be in the handwriting of Gutierez, but I do not know whether it is his or not, but I know the signatures perfectly well, they are those of Antonio Maria Pico, José Noriega, and Antonio Suñol; I know these signatures because I was Secretary to Suñol and Pico, and I have had correspondence with Noriega for many years; I know the signature of Dolores Pacheco, as I was also his Secretary, and I know the writing of Salvio Pacheco because I have often seen him write; I say that the hadwriting and signature of the second paper and the handwriting of the third paper, are those of Don Andres Castillero, because they remember other handwritings and signatures of his which I have seen; I do not say so becauce I have had any correspondence with him.

Ques. 18.—When you saw that document in 1845, where did you see it, and how came it into your hands?

Ans. 18.—I was Secretary of Antonio Maria Pico in the Court; it was brought there by that Gutierrez of Santa Clara. He said to me, "Now it is all finished, here is the fee," and he gave me three dollars and a-half, and so the document remained in the Court.

Ques. 19.—What do you mean by that Gutierrez? is he the same

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Gutierrez in whose handwriting you have said you think one of the instruments in the documents you have had shown you, to be?

Ans. 19.—It is the same person.

Ques. 20.—When you say Gutierrez paid you three dollars and a-half as a fee, what fee do you mean, and for what service was the fee paid?

Ans. 20.—It was my business to make those documents, and Father Real desired that they should be made by Gutierrez in Santa Clara, and I believe that that was the reason why they sent me three dollars and a-half, though I demanded nothing from them.

Ques. 21.—When this document was handed you by Gutierrez what did you do with it?

Ans. 21.—It remained there in the Court; I did nothing else with it.

Ques. 22.—Who was in charge of the archives at the Court when you received that document?

Ans. 22.—I was.

Ques. 23.—Who was Alcalde of San José in 1849, if you can remember?

Ans. 23.—A certain Mr. May was First Alcalde, and I was Second. Mr. May remained in a few months, and was succeeded by a certain person named Conroy, and we remained in together until the month of April of the year 1850.

Ques. 24.—During the year 1849, were you employed about the office of the Alcalde?

Ans. 24.—Yes, I was.

Ques. 25.—What employment had you there?

Ans. 25.—Second Alcalde.

Ques. 26.—What were your duties as Second Alcalde?

Ans. 26.—I attended to the suits of all those who spoke Spanish.

Ques. 27.—Could either May or Conroy speak Spanish?

Ans. 27.—May did not speak any, but Conroy spoke as well as I do myself.

Ques. 28.—You have said that you saw the document shown you, and that it was in your hand in 1849; state where you saw it.

Ans. 28.—I saw it in the said Court, but did not examine it; I had it in my hands in handling papers.

Ques. 39.—Was Pedro Chaboya ever Alcalde of San José? if yea, and you can remember, state when.

Ans. 29.—He was Alcalde, but I do not remember in what year.

Ques. 30.—Do you know who succeeded Dolores Pacheco in the year 1846?

Ans. 30.—I and Valentin Higuera were successors of Dolores Pacheco in the year 1846. There were four Alcaldes, one first and one second, and one substitute for the first, another substitute for the se-

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cond. Dolores Pacheco was the first, but I do not remember who the second was.

Ques. 31.—Who was the First Alcalde, yourself or Valentin Higuera?

Ans. 31.—Valentin Higuera.

Ques. 32.—Who was first "Suplente"?

Ans. 32.—I do not remember who the first substitute was; I was the second substitute.

Ques. 33.—Who was the first Mayor of San José, (formerly the Pueblo,) under the laws of the State of California?

Ans. 33.—I do not remember.

Ques 34.—After the Mexican system of Alcalde had been replaced by the system adopted by the State of California in the year 1850, do you know what was done with the archives of the Alcalde's office at San José?

Ans. 34.—I do not; I saw nothing more.

Examination adjourned until Monday morning, Nov. 9, 1857, at 11 A. M.

San Francisco, Nov. 9, 1857—11 A. M.

Present: U. S. Attorney, by A. P. Crittenden and E. Randolph; A. C. Peachy, for Claimant.

Cross-Examination—Questions by U. S. Attorney.

Ques. 1.—In your 30th answer, you say "It was my business to make those dooument, and Father Real desired that they should be made by Gutierrez in Santa Clara,"—what did Father Real have to do with the business?

Ans. 1.—I do not know what he had to do with it, he was there at the mine, at the time of the possession, but I do not know what he had to do in the matter.

Ques. 2.—How do you know he was there at the time of the possession?

Ans. 2.—Because I saw him there.

Ques. 3.—Who was there?

Ans. 3.—There were Suñol, Castillero, Pico, Noriega, Gutierrez and I, and several others whom I do not remember; I remember those because I went, I might say, with them.

Ques 4.—Where did you go from; at what time did you start;

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what time did you get there; how long did you stay; what happened whilst you were there?

Ans. 4.—Suñol and I went together from the Pueblo; Pico and Noriega also went from the Pueblo, the others probably went from Santa Clara, because they lived there; I do not remember at what hour we started, I think it was about 9 or 10 in the morning; we arrived there in about an hour or an hour and a-half after we started; we remained there until evening, walking about there and looking at the mine.

Ques. 5.—Did you all go on horse-back, or did some one of the party go on foot, and if so, who was it; did you return the same evening; to what place did you return, and what time did you get back?

Ans. 5.—Gutierrez went on foot; we returned the same evening; Suñol and I returned to the Pueblo, and the others left us and went in the direction of their homes; we got back a little before sunset.

Ques. 6.—How long did you have to wait for Gutierrez at the mine before he arrived, or did he get there at the same time that the rest of you did?

Ans. 6.—I do not know when he reached there; I saw him there.

Ques. 7—Did you have any conversation with him on the road; I mean when you saw him on the way a foot?

Ans. 7.—I do not remember.

Ques. 8.—Where is Gutierrez?

Ans. 8.—I do not know; I do not know whether he is dead or alive.

Ques. 9.—When did you see him last; does he now live in California; what country did he come from; was he living at Santa Clara or San José when you all went to the mine; what was his occupation in Santa Clara at the time you visited the mine?

Ans. 9.—I think I have seen him since we visited the mine, but I do not know where or when; I do not know whether he now lives in California, I have enquired for him, but have obtained no information concerning him; he first came to Pueblo in the year 1843 or 1844; I do not know what country he came from; I think he was a schoolmaster at Santa Clara when we made the visit to the mine; he lived at Santa Clara.

Ques. 10.—Was not Gutierrez a Basco; did he not wear a red cap peculiar to that people?

Ans. 10.—I do not know, he said he was a Spaniard; he was in the habit of wearing the red cap, which is generally worn by the Basques, although the cap which he wore was different in form from those worn by the Basques, because the one which he wore was long and those worn by the Basques was short and round; I never heard Gutierrez speak Basque.

Ques. 11.—Did this Gutierrez ever make or write more than one

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document at the Mission of Santa Clara, which it was your business, as the Secretary of Pico, to have made or written?

Ans. 11.—He only brought me one; I do not know whether he wrote any other.

Ques. 12.—Did Antonio Maria Pico return with you and Sufiol to the Pueblo?

Ans. 12.—I do not remember whether he returned with us or not.

Ques. 13.—You did not leave him at the mine?

Ans. 13.—No. We all came away.

Ques. 14.—Where did Pico return to on that day?

Ans. 14.—To the Pueblo.

Ques. 15.—When did you next see Gutierrez after coming from the mine?

Ans. 15.—When he came to bring the papers which he had made in Santa Clara to the Pueblo.

Ques. 16.—Was that months or weeks after the return from the mine, or how long after was it?

Ans. 16.—It was one, two or three days after.

Ques. 17—Was it three days after?

Ans. 17.—I am not certain how many days it was, one, two, or three days, but I think it was in the same week.

Ques. 18.—I want to know if it was not the same day, or the next day?

Ans. 18.—It could not have been upon the same day, because it was night when we got back.

Ques. 19.—What day of the week was it when you went to the mine?

Ans. 19.—I do not remember.

Ques. 20.—In what month was it?

Ans. 20.—I don't remember whether it was in November or December.

Ques. 21.—Was it not in January, 1846?

Ans. 21.—No. Because in 1846 I was no longer secretary.

Ques. 22.—How long was it before Christmas, or after Christmas, when Gutierrez brought you that document?

Ans. 22.—I do not know whether it was before or after.

Ques. 23.—You have not answered yes, or no, whether it was on the day after your return from the mine that Gutierrez brought you that document?

Ans. 23.—I do not know whether it was the day after we left the mine, or whether it was two or three days after.

Ques. 24.—Was that the first time you saw the document, when Gutierrez brought it to you?

Ans. 24.—It was the first time.

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Ques. 25.—How do you know that the document you have testified about, is the same document that Gutierrez brought you?

Ans. 25.—Because I know it.

Ques. 26.—Was the document which Gutierrez brought you all signed?

Ans. 26.—I did not examine it well.

Ques. 27.—Did you not read it?

Ans. 27.—I did not.

Ques. 28.—How can you know it to be the same document if you did not read it?

Ans. 28.—I do not know. I have seen it tumbling about with other papers in the Court; I always saw it in the desk tumbling about.

Ques. 29.—Did you read it when you saw it tumbled about amongst the other papers?

Ans. 29.—The superscription was what I always read.

Ques. 30.—What was the superscription which you always read?

Ans. 30.—Possession of the mine of Santa Clara, I think it says, I did not pay much attention to it.

Ques. 31.—Did you read no more than the superscription?

Ans. 31.—If I read any more, I do not remember it.

Ques. 32.—Then how do you know that this document of which you have testified is the same?

Ans. 32.—I imagine it is the same.

Ques. 33.—Who wrote the superscription; did you write it?

Ans. 33.—I do not know who wrote it, I did not.

Ques. 34.—When you all went to the mine, what engineer or surveyor did you carry with you; what kind of instruments did you carry with you; what engineer, surveyor, or instruments did you have at the mine on that occasion?

Ans. 34.—I neither knew a surveyor, nor were there any instruments whatever.

Ques. 35.—What kind of measurements did you make at the mine on that occasion, and what kind of work did you do?

Ans. 35.—We did no work, nor measurements either.

Ques. 36.—How many stakes did you drive, and if any, who drove them; how many, and in what positions were they driven?

Ans. 36.—I did not see any driven.

Ques. 37.—Did you not remain there with the rest of them?

Ans. 37.—I was there with the others, sometimes in their company, at other times apart from them, other times in the mine, other times among the bushes. I could not remain standing at the same place.

Ques. 38.—What do you mean then when you say you were at the mine at the time of the possession; what possession?

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Ans. 38.—I did not go to give possession. I merely went in their company.

Ques. 39.—What more was done there than you have said? What possession did you see given?

Ans. 39.—I only saw what they said. They said it is now all finished, and we went off. But I did not learn how or in what manner.

Ques. 40.—Answer again directly question 39.

Ans. 40.—I saw nothing. I did not go to give possession.

Ques. 41.—Do you know the handwriting of the signatures to the papers now shown you marked "Exhibit X. Y. C. McA." "Exhibit M. A." and "Exhibit L. R." and if you know, state whose they are?

Ans. 41.—I do not know whose they are, but I think they are Gutierriez'.

Ques. 42.—Look now at the document of which you have been testifying, superscribed, Posesion de la Mina de Sta. Clara, being the same produced by S. O. Houghton, and say whether the body and signatures of every paper in that document contained, and especially the last paper signed Antonia Maria Pico, Antonio Suñol and José Noriega, are not in an entirely different handwriting from that of the body and signatures of the three papers marked "Exhibit X. Y." "Exhibit M. A." "Exhibit T. R."?

Ans. 42.—The handwriting of the aforesaid snperscription is similar to that of the papers marked "Exhibit X. Y." "Exhibit M. A." and "Exhibit T. R." the handwriting of and signatures to all the papers contained in said document are different from the handwriting of and signatures to the said three papers marked "Exhibit X. Y." "Exhibit M. A." "Exhibit T. R." The signatures are entirely different, the handwriting is different, but I cannot say that it is entirely different, On Saturday I said that I believed the handwriting of the first paper contained in said document was that of Benito Diaz, but now I say positively that it is the handwriting of said Benito.

Ques. 43.—Is not the aforesaid superscription written with exceedingly large letters, and are not the exhibits with which you have been comparing it, written with small letters such as are usual in private letters; what resemblance can you see between the very large lettering of that superscription, and the small letters of the exhibits?

(Examination adjourned until to-morrow Tuesday, November 10, 1857, at 11, A. M.)

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SAN FRANCISCO, November 10, 1857, 11, A. M.

Examination of José Fernandez, a witness produced on behalf of Claimant, continued:

PRESENT: The U. S. District Att'y, by A. P. Crittenden and Edmund Randolph; A. C. Peachy, for Claimant.

Ans. 43.—The resemblance which I see is between the large letters of said exhibits and superscription. The I's and J's are similar.

Ques. 44.—Have you got in your possession a letter of Gutierrez', or any other writing by Gutierrez; if so, let me see it?

Ans. 44.—I have not. The paper marked "exhibit T. R." I once had it in my possession, but I do not know how it got here.

Ques. 45.—Will you now look at the paper shown you, being the "Escritura de Compania," compare it with the said Exhibits, "M. A." "T. R." and "X. Y." and say whether it is not in the same handwriting?

Ans. 45.—I think it is the same.

Ques. 46.—Does it not seem to you exactly the same?

Ans. 46.—I cannot say that it is exactly.

Ques. 47.—Have you the least possible doubt?

Ans. 47.—I have a doubt because I did not see them written.

Ques. 48.—Have you any other doubt? Are they not written by the same person, judging by the handwriting? Are they not both written by Gutierrez manifestly?

Ans. 48.—I think they are written by Gutierrez.

Ques. 49.—In your 20th answer on your direct examination, you have said that you asked them for nothing, meaning the persons who sent you the three dollars and a half fee by Gutierrez; who were those persons?

Ans. 49.—I do not know who sent me the fee, Gutierrez only said to me, "here, they send you this," and he gave me the three dollars and a half.

Ques. 50.—Have you no idea who the persons were that sent you the money?

Ans. 50.—I have an idea that it was Castillero.

Ques. 51.—Who was entitled to fees for papers made by the Alcalde; the Secretary or the Alcalde himself?

Ans. 51.—The Secretary; the Alcalde received no fees, nor pay for making papers, even though he should make them himself, at least I never saw him do so.

Ques. 52.—When you were examined in the Berreyesa suit of Tobin vs. Walkinshaw concerning this mine, you were asked why you did not sign the papers as attesting witness, and you said, as appears

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by the notes of Judge Hoffman, "I can't tell why I did not sign as attesting witness," and now you say that the papers were made in Santa Clara while you were in San José; was not that a good and sufficient reason why you were not attesting witness, and why was it that you could not give that reason then?

Ans. 52.—They probably did not ask the question well, or it is a mistake. If I am mistaken it is through ignorance not from design. It is true the papers were made in Santa Clara; I did not see them made, but Gutierrez told me that they had been made there.

Ques. 53.—In Tobin vs. Walkinshaw, according to Judge Hoffman's notes, you testified: "I and Castillero went together to the mines, but I don't know where the others went from," and in this case you have testified that you and Antonio Suñol went to the mine together; how is it that you don't testify the same way now as you did then?

Ans. 53.—There is a mistake in Judge Hoffman's notes, because I never said that I went to the mine with Castillero; I did not even know Castillero till I met him at the mine.

Ques. 54.—Did not Antonio Suñol ask you to go with him to the mine?

Ans. 54.—I think he did ask me; I have forgotten that matter so much that I don't remember.

Ques. 55.—Then you don't remember what he asked you to go there for?

Ans. 55.—He said to me "they are going to give possession, come with me to the mine," Pico told me the same thing. Have I not already said that Suñol invited me to go to the mine?

Ques. 56.—Were you not then very much surprised on arriving at the mine not to see any measurements made, any stakes driven, or any possession given?

Ans 56.—No, because I never saw possession given of any mine.

Ques. 57.—Never having seen possession given of this or any other mine, were you not very much surprised when, on the next day, or within two or three days, Gutierrez brought you the papers which purported to contain an account of a possession given of this mine, on the very day when you were there present?

(Question objected to, on the ground that it takes for granted what the witness has never said.)

(Objection withdrawn.)

Ans. 57.—No.

Ques. 58.—At that time was the "Juzgado" or office of the Alcalde kept at the Mission of Santa Clara, or at the Pueblo of San José?

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Ans. 58.—At San José.

Ques. 59.—Have you not seen on some occasion, possession of Ranchos given by Alcaldes, or of Suertes?

Ans. 59.—No, I have not.

Ques. 60.—Have you not seen juridical possession of Ranchos or Suertes given by Alcaldes on some occasions?

Ans. 60.—No.

Ques. 61.—What time in the year 1845, did Antonio Maria Pico cease to be Alcalde?

Ans. 61.—It must have been on the first of January, 1846, because those who went out of office surrendered it to their successors on the first of January of each year.

Ques. 62.—Did Dolores Pacheco succeed him? When did Dolores Pacheco cease to be Alcalde? Who was the first person the Americans made Alcalde of San José, and when?

Ans. 62.—Dolores Pacheco succeeded Pico. In the month of July I went to Los Angeles with Castro, and Pacheco accompanied us as far as La Natividad, and from there he returned to the Pueblo, and when I returned to the Pueblo in the month of August, I found Pedro Chaboya, Alcalde of the Pueblo of San José.

The first person made Alcalde of San José by the Americans was called Captain Burton. I do not remember when the Americans made him Alcalde.

Ques. 63.—How long have you lived in California? From what country did you come? Where were you born? What was the first you knew about this mine before Castillero came to this country?

Ans. 63.—I have lived in this country 40 years. I came here from Peru. I was born in Cadiz in Spain. Before Castillero came to this country I heard it said that Luis Chaboya had a mine, but I did not know where it was nor had I ever seen it.

(That part of the question and answer which relates to the witness' knowledge of the mine before the coming of Castillero, objected to; the question on the ground of irrelevancy, and the answer on the ground of hearsay.)

Ques. 64.—Is that all that you recollect about this mine before that time? Do you not know that this is the same mine with that of Luis Chaboya?

(Question objected to on the ground of irrelevancy, and also on the ground that it is examining the witness upon a point not touched upon in the examination in chief.)

Ans. 64.—I do not remember any more. It is said that this is the same mine of Luis Chaboya, but I don't know whether it is or not.

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Ques. 65.—What is your business now? Do you own a Rancho? Do you own a mine? Do you keep a store? Are you a mechanic? Are you a laborer? Are you a lawyer? Are you a doctor? Have you been often a witness during the last 8 years? How do you gain your livelihood?

(Form of question objected to, as containing an unnecessary number of words, and encumbering this record unnecessarily.)

Ans. 65.—I have no business whatever; I am owner of a piece of land; I am not owner of any mine; I keep no store; I am a mechanic; I am a laborer; I am not a lawyer; I am not a doctor; I have been a witness two or three times during the last 8 years; I earn my living by working.

Ques. 66.—What piece of land do you own? How much land, and where is it? What kind of a mechanic are you, and what sort of work is it that you gain your livelihood by?

Ans. 66.—I have a piece of land in the county of Santa Clara. I do not know how large it is. I make a living by cultivating this piece of land. I am a laborer, not a mechanic.

JOSE FERNANDEZ.

Subscribed and sworn to before me this 10 Nov., 1857.

CUTLER McALLISTER,
U. S. Com.

Deposition taken subject to all exceptions, except as to the form of the questions.

CUTLER McALLISTER,
U. S. Com.

EXAMINATION OF JOSE FERNANDEZ IN SPANISH.

Ques. 17.—Vea Vd el documento presentado por S. O. Houghton, un testigo examinado en favor del Actor ed dia 23 de Octubre de 1857. Sicido el Documento de que se habla en su tercera respuesta. Y diga si Juana a visto ese documento antes, si conoce Vd. la letra en los cuerpos de los instrumentos contenidos en dicho documento y las firmas en ellos, y porque conoce Vd la dicha letra y firmas.

Answer 17.—El documento lo conosco las letras no puedo decir figamente que letras son conosco las firmas que estan al fin del documento

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son las de Antonio Suñol y José Noriega y Antonio Maria Pico conosco la letra del decreto que es de Dolores Pacheco. Me parece que la letra de la Representacion es de Benito Dias es el primer papel que se halla el este documento. La firma de la arriba representacion es de José Castro. He visto este documento antes.

Lo tuve en mis manos en el Jusgado del Pueblo el año '45, y el año '49 cuando esture de Alcalde.

No me acuerdo si el papel que llamo la representacion estaba con las otras instrumentos cuando los tuve en mis manos en el año '49. Cuando los tuve en el aáo '45 estoy seguro que ira estaba. El papel que llamo la representacion esta firmado por José Castro y el tiene el decreto firmado por Dolores Pacheco. Me parece que la letra y la firma del segundo Papel es de Don Andres Castillero. La firma del terco papel me parece que es de Don Andres Castillero tambien pero la letra del cuerpo del papel no se de quien es. La letra del ultimo papel se parece al de Gutierrez pero no se si es o no pero las firmas las conosco perfectamente son de Ant°. M^a^. Pico, José Noriega y Antonio Suñol. Conosco estas firmas por que fin secretario de Suñol y Pico y he tenido correspondencia con Noriega por muchos años conosco la firma de Dolores Pacheco porque fui Secretario de el tambien y conosco la letra de Salvio Pacheco porque lo he visto escribir muchas veces. Digo que la letra y la firma del segundo papel y la letra del tercer papel so de Don Andres Castillero porque se parecen a otra letra yfirmas de el que he visto. No lo digo porque halla tenido correspondencia con el.

Ques. 18.—Cuando vio Vd este documento en 1845 ádonde lo vio y de que modo obtuso Vd la posesion de el.

Res. 18.—Estaba yo de escribiente con Antonio M^a^. Pico en el Jusgado; alli lo trigo ese Gutierrez de Santa—me digo "ya esta todo concluido aqui tiene V^d^. la paga" y me dio tres pesos y medio, y asi quedo el documento ento en el Juzgado.

Preg. 19.—Que quere Vd decir cuando dice "ese Gutierrez" es el mismo Gutierrez que ha dicho Vd que le parecia que la letra de uno de los instrumentos del documento que se le ha enseñado a Vd.

Resp. 19.—De el es ese mismo.

Preg. 20.—Cuando dice Vd que Gutierrez le pago a Vd tres pesos y medio como paga, que paga querre Vd decir y por que servicio era la pago ?

Res. 20.—A mi me correspondia hacer esos documentos y el Padre Real hizo empeño para que los hicierra Gutierrez en Santa Clara, y yo creco que ese era el motivo porque me mandaron los tres pesos y medio pero yo no les pedi nada.

Preg^a^. 21.—Cuando Gutierrez le entrego a Vd este documentos que hizo Vd con el.

Resp. 21.—Alli quedo en el juzgado no hize otra cosa con el.

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Preg. 22.—Quien estaba encargado de los Archivos de Jusgado cuando recibio Vd ese documento.

Resp. 22.—Yo.

Preg. 23.—Quien esa Alcalde en San Jose en 1849 si Vd se acuerda.

Res. 23.—Un tal Mr. May era primero y yo era el segundo. Mr. May estuvo algunos meses y despues entro un tal Conroy y esturimes Junlos hasta el mes de Abril de año '50.

Durante.

Preg. 24.—En el año 144 estaba Vd empleado en la oficina del Alcalde.

Res.—Si.

Preg. 25.—Que empleo tenia Vd alli.

Resp.—Segundo Alcalde.

Preg. 26.—Que deberes tenia Vd como segundo Alcalde.

Resp.—Corria con los demandas de todos los que hablaban español.

Preg. 27.—Que si May ó Conway podian hablar Español.

Resp. 27.—May no podia pero Conway hablaba español lo mismo que yo.

Preg. 28.—Ha dicho Vd que habia visto el documento que se le ha enseñado y que estaba en sus manos en el año 1849 diga Vd a donde lo vio.

Res.—Lo vi en el mismo Juezgado—pero no lo registre tampoco—manajando los papeles les alli lo tuve en mis manos.

Preg. 29.—Que si Pedro Chaboya fue alguna vez Alcalde de San Jose y si fue en que epoca se Vd se acuerda.

Res.—Fue Alcalde pero no me acquerdo en que epoca.

Preg. 30.—Sabe Vd quen era el successor de Dolores Pacheco en el año 1846.

Resp.—Yo y Valentin Higuera fuimos successores de Dolores Pacheco en el año 1846. Habian cuatro Alcaldes un primero un segundo y un septente del primero y otro suplente del segundo Dolores Pacheco era primero pero no me acuerdo quien era el segundo.

Preg. 31.—Quien era el primer Alcalde Vd o Valentin Higuera.

Res.—Valentin Higuera.

Preg. 32.—Quien era el primer suplente.

Res.—No me acquerdo quien era el primer suplente. Yo era el segundo.

Preg. 33.—Quien fue el primer Mayor de la Ciudad de San José antiguamente el Pueblo bajo las leyes del Estado de California.

Res.—No acuerdo.

Preg. 34.—Despues que el sistema Mexicana de Alcaldes fue suplantado por el sistema adoptado por el Estado de California en el año 1850 sabe Vd que se hiso con los archivos del Juzgado del Alcalde en San José.

Resp.—No se—no vi mas.

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CROSS-EXAMINED.

Preg. 1—En su respuesta No. 20 dice Vd " a mi me correspondia hacer esos documentos y el padre Real hizo empeño para que los hiciera Gutierrez en Santa Clara," que tenia el padre Real que hacer con el asunto.

Resp.—No se que tendria que hacer el estaba alli en la misma cuando la posesion—pero no se que tendria que hacer en eso.

Preg. 2.—Como sabe Vd que el estaba alli al tiempo de la posesion.

Resp.—Por que lo vi alli.

Preg. 3.—Quien mas estaba alli.

Resp.—Estaban Suñol, Castillero, Pico, Noriega y Gutierrez yo y otros varios que no me acquerdo quienes eran me acquerdo de aquellos porque fuimos casi juntos.

Preg. 4.—De donde fueron—a que hora empezaron su viage—cuando llegaron alli cuanto tiempo se quedaron y que sucedio mientras que quedaron alli.

Resp.—Yo y Suñol fuimos juntos del Pueblo Pico y Noriega tambien fueron del Pueblo los otros man de Santa Clara por que alla vivian. No me acuerdo que a hora empezamos nuestro viage—me parece que fué como a las nueve o las diez de la mañana llegamos alli en una hora o hora y media despues de nuestra salida. Quedamos alli hasta la tarde y estuvimos passando por alli y mirando la mina.

Preg. 5.—Fueron Vds. todos a Caballo o fue alguno a pie, y sé fue alguno a pie quien era, si volvieron la misma tarde; a donde se volvieron y a que hora estuvieron de vuelta.

Resp. 5.—Gutierrez fue a pie; nos volvimos la misma tarde. Yo y Suñol volvimos al Pueblo y los otros se separaron de nosotros tomando direccion de su casa. Esturimos de vuelta un poca antes de ponerse el sol.

Preg. 6.—Cuanto tiempo tuvierron que aquardar a Gutierrez en la mina o llego el alli al tiempo que llegaron los de mas.

Resp. 6.—No si cuando llegaria. Yo lo vi alli.

Preg. 7.—Tuvo Vd alguna conversacion con el en el camino, quero decir cuando Vd lo vio en el carmino a pied.

Resp. 7.—No me acuerdo.

Preg. 8.—Adonde esta Gutierrez.

Resp. 8.—No se; no se si esta vivo o muerto.

Preg. 9.—Cuando lo vio Vd por la ultima vez vive el ahora en California cuanto tiempo estuvo el viviendo en California, de que pais vino el Estaba el viviendo en Santa Clara ó San José quando fueron Vds. todos a la mina. Que negocio tenia el en Santa Clara en el tiempo mencionado.

Resp. 9.—Creo que lo he visto despues de la visita que hicimos a la mina pero no se donde fué ni quando. No se si vive ahora en Califor-

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nia, he preguntado por al y no me han dado razon; el uno primero al Pueblo en el año '43 o '44 no se de que pais uno.

Resp. 9.—Yo creo que el era maestro de Escuela en Santa Clara en el tiempo que hizamos la visita a la mina. El vivia alli en Santa Clara.

Preg. 10.—Que si Gutierrez no era un Basco. No tenia el costumbre de usar una goma colorada como suelen usar los Bascos.

Resp. 10.—No se el decia que era Español; el tenia costumbre de usar la goma colorada que generalmente usan los Bascos; aunque la goma que el usaba era de forme diferente de los que usan los Bascos porque el que el usaba era largo y los que usan los Bascos son cortos y redondos nunca x vi hablar biscaino a Gutierrez.

Preg. 11.—Que si este Gutierrez jamas hizo o escribio mas de uu documento en la Mision de Santa Clara que le correspondia a Vd como secretario de Pico hacer o escribir.

Resp.—El no me trajo mas de uno: no se si ha escrito otro.

Preg. 12.—Que si Antonio Maria Pico le volvio al Pueblo con Vd. y Suñol.

Resp. 12.—No mi acuerdo si volvio el con nosotros ó no.

Preg. 13.—No no dejaron Vd en la misma.

Resp. 13.—No todos bajamos.

Preg. 14.—Adonde volvio Pico ese dia.

Resp. 14.—Volvio al Pueblo.

Preg. 15.—Despues de su retenida de la mina; quando lo volvio a ver a Gutierrez por primera vez.

Resp. 15.—Quando volvio a traer al Pueblo los papeles que habia hecho en Santa Clara.

Preg. 16.—Que si eso fue semanas ó meses despues de la retenida de la mina ó cuanto tiempo despnes fue.

Resp. 16.—Como dos ó tres dias despues.

Preg. 17.—Fueron tres dias despues.

Resp. 17.—No estoy cierto cuantos dias fueron si fue un dia dos tres dia pero pienso que en la misma semana.

Preg. 18.—Quiero saber si no fue el mismo dia ó el dia siguente.

Resp. 18.—No podia ser el mismo dia porque ya era de noche cuando volvimos.

Preg. 19.—Que dia de la semana era cuando fueron a la mina.

Resp. 19.—No se.

Preg. 20.—En que mes fué.

Resp. 20.—No me acuerdo si fue en Nov. ó Diciembre.

Preg. 21.—Que si no fue en Enero '46.

Resp. 21.—No porque en '46 ya yo no era secratario.

Preg. 22.—Quanto tiempo antes de la Pascua ó despues de la Pascua fue cuando Gutierrez le trajo a Vd ese documento.

Resp. 22.—No se si fue antes ó despues.

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Preg. 23.—No ha contestado Vd si ó no fue el dia siguiente de su vuelta de la mina que Gutierrez le trajo a Vd ese documento.

Resp. 23.—No se si fue el dia despues que salimos de la mina ó si fue dos ó tres dias despues.

Preg. 24.—Que si esa era la primera vez que vio Vd el documento —cuando se lo trajo Gutierrez.

Resp. 24.—Esa era la primera vez.

Preg. 25.—Como sabe Vd que el documento de que habla Vd. en su testimonia es el mismo documento que le trajo a Vd Gutierrez.

Resp. 25.—Porque lo conosco.

Preg. 26.—Que si el documento que le trajo Gutierrez a Vd estaba todo firmado.

Resp. 26.—No lo registre bien.

Preg. 27.—No lo légo Vd.

Resp. 27.—No.

Preg. 28.—Si Vd no lo lego como puede saber Vd que el mismo documento.

Resp. 28.—No se; lo he visto rodando alli con otros papeles en el Juzgado, siempre no veia en la papelera rodando.

Preg. 29.—Lo seyo Vd. cuando lo vio rodando con los otros papeles.

Resp. 29.—La caratula de culmia era lo que leia siempre.

Preg. 30.—Que era la caratula que leia Vd siempre.

Resp. 30.—Posesion de la mina de Santa Clara me parece que dice. No puse mucho cuidado.

Preg. 31.—No leyo mas que la caratula.

Resp. 31.—Si lei mas no me acuerdo.

Preg. 32.—Entonces como sabe Vd que este documento de que ha hablado en su testimonio es el mismo.

Resp. 32.—Me figuro que es el mismo.

Preg. 33.—Quien escribio la carantula la escribio Vd.

Rep. 33.—No se quien la escribio. Yo no la escribi.

Preg. 34.—Cuando fueron Vds. todos a la mina que agruenesor se llevaron con sigo que clase de instrumentos se llevaron. Que agrunenson ó instrumentos tenian en la mina en esa ocasion.

Resp. 34.—Ni conosi agrumenson ni habia instrumento ninguno.

Preg. 35.—Que clase de medidas hicieron en la mina en esa ocasion y que clase de trabajo hicieron.

Resp. 35.—Ningun trabajo hicimos en medidas tampoco.

Preg. 36.—Cuantas estacas pusieron y si pusieron algunas cuantos y en que lugares los pusiceron.

Resp. 36.—Yo no vi poner ninguna.

Preg. 37.—No se quedo Vd alli con los demas.

Resp. 37.—Alli estaba con los otros, mas veces estaba junta con el-

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los otras veces separando, otras veces adentro la mina otras veces en el monte no habia de estar un sitio pasado.

Preg. 38.—Entonces que es lo que Vd quere decir cuando dice que estuvo en la mina cuando la posesion, que posesion.

Rep. 38.—Si yo no fin a dar la posesion fin en compañia de ellos no mas.

Preg. 39.—Que mas de lo que ha dicho Vd se hizo alli. Que fue la posesion que Vd vid dar.

Resp. 39.—No vi mas que lo que hablaron digeron, ya esta concluido, y nos fuimos pero no supe como ni de que manera.

Preg. 40.—Conteste Vd directamente la pregunta No. 39.

Resp. 40.—Yo no vi nada. Yo no fue a dar posesion.

Preg. 41.—No conose Vd la letra y las firmas de los papeles que ahora se le muestra marcados " exhibit X, Y, exhibit M, N, y T, R," y si los conose digu de quienes son.

Resp. 41.—No se de quienes son pero me parace que son de Gutierrez.

Preg. 42.—Vea Vd ahora el documento de que ha estado Vd hablando en su testemonia y que tiene enciena una caratula que dice " Posesion de la mina de Santa Clara y siendo el mismo quo presenta S. O. Houghton y diga si la letra y las firmas de cada una de los papeles continuado en ese documento y particularmente el ultimo papel firmado por Antonio Maria Pico, Antonio Suñol y José Noriega no son enteramente diferentes de la letra y firmas de los tres papeles marcados Exhibit " X Y," Exhibit M A, Exhibit T R ?

Resp. 42.—La letra de la caratula ante dicha es igual a la letra de los papeles marcados exhibit X Y, Exhibit M N, Exhibit T R. La letra y las firmas de todos los papeles contenidos an dicho documento son diferentes de las letras y firmas de los dichos tres papeles marcados Exhibit X Y, Exhibit M A, Exhibit T R. Las firmas son enteramente diferentes. La letra es diferente, pero no puede afirmar que sea enteramente diferente. El sabado dige que me parecia que la letra del primer papel contenido en dicho documento era la de Benito Dias pero ahora digo positivamente que es la letra de el dicho Benito.

Preg. 43.—No esta la dicha caratula escrita en letra muy grande y no estan los papeles con los cuales lo ha estdo Vd comparando, escritos en letra muy pequeña como se suele escribir cartas particulares. Que semejanza encuentra Vd entre la letra grande de dicha caratula y la letra pequeña de dichas papeles.

Resp. 43.—La semejanza que en cuentra es en las letras grandes de dichos papeles y caratula las " S " y " J " son semejantes.

Preg. 44.—Tiene Vd en en posesion una carta de Gutierrez ó cualquiera otra escritura de Gutierrez y si tiene enseñe me lo.

Resp. 44.—No tengo el papel marcado Exhibit T R, lo tuve en mi poder pero no se como ha venido a pasar aqui.

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Preg. 45.—Vea Vd ahora el papel que se le muestra siendo la escritura de compania compare lo con dichos papeles marcados M A, T R y X Y, y diga si no es la misma letra.

Resp. 45.—A mi me parece la misma.

Preg. 46.—No le parece a Vd que es exactamente la misma.

Resp. 46.—No puede afirmar que sea exactamente.

Preg. 47.—Tiene Vd la mas minimar duda.

Resp. 47.—Tengo duda porque no los he visto escribir.

Preg. 48.—Tiene Nd alguna otra duda. No estan escritos por la misma persona juzgado por la letra, no estan los escritos por Gutierrez manifiestamente.

Resp. 48.—A mi me parece que estan escritos por Gutierrez.

Preg. 49.—En su respuesta No. 20 su con testacion a la preguanta que le hacia el Abagado del Actor ha dicho Vd que no les pidio nada con referencia a las personas que le luviron a Vd la paga de tres pesos y medio por Gutierrez. Quien eran esas personas.

Resp. 49.—Yo no se quien me envio la paga. Gutierrez no me digo mas que "aqui le envian esto" y me entrego los tres pesos y medio.

Preg. 50.—No tiene Vd alguna idea de quenes fueron las personas que le enviaron a Vd la paga.

Resp. 50.—Tengo idea que seria Castillero.

Preg. 51.—A quien le correspondia recibir paga por papeles hecho por el alcalde el secretario el mismo Alcalde.

Resp. 51.—El secretario, el alcalde no recibia ningun derecho ni paga por hacer papeles aunque los haciera el mismo, a lo menos yon nunca lo vi.

Preg. 52.—Cuando dio Vd su testimonia en el pleito de Tobin contra Walkinshaw relativo a esta mina le preguntaron a Vd porque no habia, firmado Vd los papeles como testigo y Vd contesto por las notas del Juez Hoffman no puedo decir porque no firme como testigo. Y ahora dice Vd que los papeles se hicieron en Santa Clara mientras que Vd estaba en San José; no era eso suficiente razon porque no firmaria Vd como testigo y porque no dia Vd esa razon entonces?

Resp. 52.—No me lo preguntarian bien ó sera algun equivoca si yo me equivoco es por ignorancia no es malicia. Es verdad que los papeles se hicieron en Santa Clara. Yo no los vi cuando se hicieron pero me digo Gutierrez que alla se habien hecho.

Preg. 53.—En el pleito de Tobin contra Walkinshaw segun consta por las notas del Juez Hoffman digo Vd en su testimonio "Yo y Castillero fuimos a la mina juntos pero no se de donde fueron los otros," y en esta causa ha dicho Vd y Antonio Suñol fueron a la mina juntos. Como se hace que su testimonio ahora es deferente a lo que fue entonces.

Resp. 53.—Hay equivoca en las notas del Juez Hoffman porque yo

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nunca dije que habia ido a la mina con Castillero ni conosi a Castillaro hasta que lo encontre en la mina.

Preg. 54.—Que si Antonio Suñol le dijo a Vd que fuese con el a la mina.

Resp. 54.—Creo que si me ; dijo, ya tengo tan olvidado eso que no me acuerdo.

Preg. 55.—Entonces no se acuerda Vd para que le dijo el que fuera Vd alli.

Resp. 55.—Me dijo van a dar la possesion van con migo a la mina, y Pico me dijo lo mismo.—No he dicho ya que Suñol me comoido que fuese a la mina.

Preg. 56.—Cuando llego Vd entonces a la mina no estaba Vd mucho de no ver hacersir medida ninguna ni poner estacas ni dar possescion ninguna.

Resp. 56.—No porque nunca habia visto dar possecion de ninguna mina.

Preg. 57.—No habiendo nunca visto dar possecion de esta vio de ninguna otra mina no quedo Vd muy serprendido cuando el dia siguiente o en los dos o tres dias siguientes Gutierrez le trujo á Vd los papeles que pretendian dar cuenta de una possecion de esta mina dada el mismo dia que estuvo Vd alli presente.

Resp. 57.—No.

Preg. 58.—En esa epoca estaba el juzgado o oficina del alcalde situado en la mision de Santa Clara o en el Pueblo de San José.

Resp. 58.—En San José.

Preg. 59.—No ha visto Vd alguna vez dar possecion de Ranchos o Suertes por los alcaldes.

Resp. 59.—No.

Preg. 60.—No visto los alcaldes alguna vez dar possecion juridical de Ranchos o Suertes.

Resp. 60.—No.

Preg. 61.—En que parte del año 1845 dijo de ser Alcalde Antonio Maria Pico.

Resp. 61.—Seguramente seria al primero de Enero de 1846 por que los que salian entregaban el juzgado a los que entraban el dia primero de Enero de cada año.

Preg. 62.—Que si Dolores Pacheco entro immediatamente despues de el. Cuando salis Dolores Pacheco del empleo de alcalde, quien fué la primera persona que hizieron alcalde los Americanos en San José y cuando.

Res. 62.—Dolores Pacheco entro immediatamente despues de Pico. En el mes de Julio yo me fué para Los Angeles con Castro y Pacheco nos acompañio hasta La Natividad y de alli se volvio para el Pueblo y cuando yo volvi al Pueblo en el mes de Agosto encontre a Pedro Chaboya de Alcalde del Pueblo de San Jose. El primer Alcalde que pos-

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secion los Americanos en San José se llamaba el Capitan Burton. No se cuando fue que los Americanos pensenen este alcalde.

Preg. 63.—Cuanto tiempo ha vivido en California, de que pais vino, en que pais nacio, que fue lo primero que supo Vd de esta mina antes que vinies a Castillero a este pais.

Resp. 63.—He vivido en este pais 40 años vine aqui del Peru. Naci en Cadiz España. Antes que Castillero viniesi a este pais oi decir que Louis Chaboya tenia una mina pero no sabia donde era ni nunca la habia visto.

Preg. 64.—Es eso todo de que se puede Vd acordar antes de esa epoca. No saba Nd que esta es la misma mina de Louis Chaboya.

Res. 64.—No me acuerdo de mas dicen que es la misma mina de Luis Chaboya pero yo no se se es o no.

Preg. 65.—Que negocio tiene Vd ahora es Vd dueño de algun Rancho. Es Vd dueño de alguna mina. Tiene Vd algun Almacen. Es Vd un artesano. Es Vd un homcre que gana la vida con el trabajo de sus manos es Vd un abogado. Es Vd un medico. Ha sido Vd testigo muchas veces durante los 8 años ultimos pasados como gana Vd la vida.

Res. 65.—No tengo negocio ninguna soy dueño de un pedazo de tierra. No soy dueño de ninguna mina. No tengo almacen. Soy artesano gano la vida trabajando con las manos. No soy abagado. No soy medico. He sido testigo 2 o 3 veces en los ultimos 8 años gano la vida con mi trabajo.

Preg. 66.—Que pedazo de tierra tiene Vd de que tamaños, adonde se alla, que clase de artes, ano es Vd que laya de trabajo es el que hase Vd para ganar la vida.

Resp. 66.—Tengo un pedazo de tierra en el condado de Santa Clara, no se de que tamaño es gano lo vida trabajando este pedazo de tierra; soy labrador; no soy artesano.

The foregoing are the questions as put to the witness by the Interpreter, and the answers as received from the witness.

C. McALLISTER,
U. S. Com.

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Exhibits to Deposition of Jose Fernandez.

EXHIBIT A. B.

No. 1.

Sr Alcalde de 1a Nominacion del Pueblo de S. Jose de Gpē:

Pablo de S. Jose, Gpe, Junio 29 de 846. Como lo pide la parte incluilase este y archibese. PACHECO.

Jose Castro tenite Coronel de caballeria de el ejercito Mejicano, natural de este Departamto ante la notaria justificacion de V. comparesco y digo: que representando hoy la persona y drō. de el Capn Dn Andres Castillero y demas individuos que forman la compa (siendo yo uno de los accionistas) en la mina de azogue que denuncio dhō Sr Castillero, el dia tres de Deciembre de mil ochocientos cuarenta y cinco y se nos dio la posecion el dia trienta del mismo mes y año arreglandome en todo a las leyes de mineria titulo sesto articulo primero en que concede a los descubridores de minerales nuebos, tres pertenencias continuas ó interumpidar con las medidas designadas pr ley' y pr combenir asi al dho que tiene la compañia da hoy pr deducidas ante las tres pertenencias á contiuuacion de la primera mereciendole que se sirba unir este escrito al espediente de denuncio para que quede archibado y conste en todo tiempo. No llendo en papel del sello correspondiente pr no haberlo.

A. V. suplico provea de conformidad en lo qe recibire merced y justicia.

Santa Clara, Junio 27 de 1846.

JOSE CASTRO.

Es copia de su original sacada a la letra de el que existe en este Archibo.

PEDRO CHABOYA.

Sr Alcalde de 1a Nomination:

Andres Castillero, Capn de Cab Permante y residte hoy en este Departmento ante la notoria Justificacion de V. hace presente: que haviendo descuvierto una veta de Plata con las de oro en terreno del Rancho perteneciente al Sargto retirado de la Compa precidial de S. Franco Jose Reyes Berreyesa, y queriendo trabajárla en Compa suplico á V. qe arreglado a la ordinanza de mineria se sirba fijar rotulones en los parajes publicos de la jurisdn para que llegada el tiempo de la posecion juridica asegure mi drō segun las leyes de la materia.

A. V suplico probea de conformidad, en lo qe recivire merced y

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Justicia : admitiendo este en papel comun p^{r}. falta del selledo correspond^{te}.

Micion de St^{a} Clara, Nbr$\bar{e}$ 22 de 845.

ANDRES CASTILLERO.

Certifico ser copia de su original.

PEDRO CHABOYA.

Sor Alcalde de 1ª Nominacion del Pueblo de S. José, Gp$\bar{e}$:

Andres Castillero, Capitan de Caballeria permanente ante la notoria justificacion de V. comparesco y digo ; que ensallando el mineral que con anterioriad denuncie a ese Juzgado he sacado á mas de Plata con ley de oro asogue liquido en preciencia de algunos, y p^{r} combenir haci ami dr$\bar{o}$ le he demerecer á V. que unido al escrito de denuncio se hasehibe esta representacion no llendo en papel del sello por no haberlo.

A V. Suplico provea de conformidad en lo que recivire merced y justicia.

Santa Clara, Diciembre 3, de 1845.

ANDRES CASTILLERO.

Certifico ser copia de su original.

PEDRO CHABOYA.

No encontrandose en el Departam^{to} de California, Diputacion de Mineria y siendo esta la unica vez desde la poblacion de la Alta California q^{e}. se trabaja con arreglo a las Leyes de un mineral; y careciendo ademas de Juez de letras el segundo Distrito Yo el Alcalde de 1ª nominacion C. Antonio M^{a}. Pico he benido acompanado de dos testigos p^{a}. actuar p^{r}· receptoria, á falta de Escribano Publico q^{e}. no le hay, para dar posecion juridica de la mina conocida con el nombre de Santa Clara en esta jurisd^{n} situada en el Rancho del Sargento Jose Reyes Berreyesa, p^{r} que haviendo perecido el tiempo que señala la ordenanza de mineria para deducir su accion el C. Andres Castillero y que otras pudiesen alegar mejor dr$\bar{o}$ desde el tiempo denuncio á la fecha ; y encontrandose dh$\bar{o}$ mineral con abundancia de metales, crystalados, el poso echo con las reglas del Arte, y produciendo la elaboracion de la mina abundancia de Azogue liquido segun las muestras que tiene el Juzgado, y estando tan recomendado por Leyes vigentes la proteccion de un articulo tan necesario para la amalgansacion de oro, y plata en la Republica he venido en consederle tres mil varas p^{r}. todos rumbos á reserva de lo que señale la ordenanza Gr$\bar{a}$l de

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Mineria p^{r}. ser trabajada en Compañia de lo que doy fé ; firmando con migo los testigos y quedando agregado este acto de posecion al cumulo del espediente que queda depositado en el archibo de mi cargo no llendo puesto en el Papel del Sello respectibo q^{e}. no le ay en los terminos de la ley.

Juzgado de S. José Gpē Diciembre de mil ochocientos cuarenta y cinco.

ANTONIO M^{A}. PICO.

de asist^{a}. ANTONIO SUÑOL.

de asist^{a}. JOSE NORIEGA.

Certifico ser copia de su original sacado a la letra p^{r}. los autos originales que existen en este archibo y para su constancia lo firmo á trece de Agto de mil ochocientos cuarenta y seis.

PEDRO CHABOYA.

(Endorsed)

Diligencias en el Registro.

EXHIBIT "C. D."

No. 2.

Escritura de Compañia que el Sr D^{n} Andres Castillero, Capitan de Cavalleria permanente, celebra con el Sōr Comandante General D^{n} José Castro, los Srēs Secundino Robles, Teodoro Robles, y una Sesion voluntaria que han hecho los Compañeros perpetuamente al R. P. F. José M^{a} del Refugio Suares del Real, de una Mina de Plata con ley de Oro y Azogue, en el Rancho de D^{n}. Jose Reyes Berreyesa en la jurisdiccion del Pueblo de San José de Guadalupe.

Articulo 1°.—El Sr D^{n} Andres Castillero arreglandose en un todo á la ordenanza de Mineria hace formal Compañia perpetuamente con los mencionados Srēs en esta forma la mitad de la mina, que es de la que puede disponer se dividira en tres acciones en esta forma cuatro Barras, al Sr Com^{te} General cuatro Barras y los Srēs. Secundino y Teodoro Robles, y las otras cuatro al Reberendo Padre Fr José M^{a}. del Refugio Z. del Real en clase donacion perpetua.

Articulo 2°.—Ninguno de los compañeros podra bender ó enagenar

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ninguna de sus acciones de manera q. el que verificare dicha enagenacion perdera su derecho quedando resumida en los demas compañeros.

Artº. 3º.—Los gastos se haron en proporcion a las acciones llevandose una cuenta formal por un contador que se pagará del fondo comun.

Artº. 4º.—Arreglandose en un todo á lo que previene la Ordenanza de Mineria, cualquier diferencia se rosolverá por los mismos compañeros.

Artº. 5º.—Dirigira las Labores, y gastos y travajos de la mina, Dⁿ. Andres Castillero y en su defecto el R. P. Fr José Mª. del R. Z. del Real.

Artº. 6º.—No se extraerá de los productos mas cantidades que los que se necesiten para el arreglo de la negociacion hasta que se arreglen los travajos, y cualquier cantidad que sea há de ser con consentimiento de todos los compañeros hasta que este arreglada la negociacion.

Artº. 7º.—Estos combinios, se autorizaran a presencia del Sr. Prefecto del 2º. Distrito Dⁿ. Manuel Castro, depositandose el documᵗᵒ original en el archivo del partido, y dandose una copia certificada por S. Sª. a los interesados.

Mision de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Por el Sr. Comᵗᵉ. Genˡ. Dⁿ. José Castro.

ANDRES CASTILLERO.
Fr JOSÉ Mª. del R. S. del REAL.

Por Secundino y Teodoro Robles,

FRANCº. ARCE.

Es copia fiel del Original a la que me remito.
Mision de Santa Clara Diciembre ocho de mil ochocientos cuarenta y cinco.
MANˡ. CASTRO.

ANTONIO Mª. PICO.

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SELLO CUARTO

UN REAL.

JESUS VEJAR ESCRIBANO PUBLICO.

Certifico y doy fé que las firmas que preseden de Don Manuel Castro y Don Antonio Maria Pico autorizando el presedente documento de Compania entre los primitivos dueños de la Mina Santa Clara en la Alta California las he visto iguales en otros documentos que me han sido presentados en la Casa de los Señores Barron, Forbes y Compañia, y ademas las ha dado por ciertas reconociendolas por del puño y letra de los mismos el Señor Don Andres Castillero por actos que ante mi otorgó; y por esta razon se Juzga por este oficio que dichas firmas son las mismas que aconstumbran aquellos Señores. Y á pedimiento de las repetidos Barron Forbes y Compania signo y firmo el presente en Tepic a quince de Marzo de mil ochocientos cincuenta.

JESUS VEJAR.

El Alcalde 1° Constitucional y Escribano Publico que firmamos, Certificamos y damos fé que el signo y firma que antecede, es el que uso y aconstumbra el Escribano Don Jesus Vejar eu todos los actos que ante el pasan.

Asi lo comprovamos en Tepic a quince de Marzo de mil ochocientos cincuenta.

LORETO CORONA.

EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES.

I George W. P. Bissell, Consul of the United States of North

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America, for this district, hereby certify that the signatures attached to the foregoing document are in the true handwriting of the subscribers who legally hold the situations therein represented and are worthy of all faith and credit.

{ L. S. } In testimony whereof I hereunto set my hand and seal of office in the City of Tepic this first day of December in the year one thousand eight hundred and fifty.

G. W. P. BISSELL,
U. S. Consul.

EXHIBIT "T. R."

No. 3.

Recibi del Sindico Precurador cuatro pesos en cuenta de Mayor Cantidad que se me debe por el desempeño de secret°. que fuy en este Juzgado.

S^{n} José Guad^{e}. Mzo 4, 1846.

A. GUTIERREZ.

EXHIBIT "M. A."

En mi nota anterior que le tengo A. V. remitida sobre el pago que deben de hacer los padres que tienen hijos, en esta Escuela: yo creyendo que hoy verificarian dicho pago, y al contrario no han efectuado nada de lo dicho; y por tanto espero de su mucha adtividad los exija sin falta alguna á que berifiquen el so dicho pago, pues como dijé en mi anterior si se les deja pasar mas tiempo se les ara much mas penoso.

Si despues que hagan su correspond^{te}. pago quieren retirar sus hijos bien lo pueden, hacer pero advirtiendo que paguen primero lo que deven segun lista, o cuenta que tengo pasada á hese Juzgado de su Carga.

Dios y Libertad.

Marzo 9 de 1846.

A. GUTIERREZ.

Sr Juez de 1ª nominacion de S^{n}. José Guad^{e}. D^{n} Dolores Pacheco

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EXHIBIT "X. Y."

Sr. Alcde. de 1a Nominacion.

Haviendo dirijido mi Nota oficial con fecha 8, del actual á esé Juzgado de su Cargo, referente a la sucricion que deven de hacer los Padres que tienen sus hijos, en este Establicto de primeras letras: vuelvo aresterar a V. de nuevo para que se sirva tomarse la molestia de intimarles que saguen lo que les corresponde por el mes vencido, y para este efecto tiene V. la lista del numero de jovenes en esé Juzgado y per ella espero de su adtividad exija al pago á los Padres de los jovenes que estan a mi Cargo.

Dios y Ley.

Pueblo de Sn. José Guade. Fbrō 12 de 1846.

A. GUTIERREZ.

Sr Alce de 1a. Nomn de Sn. José Guade. Dn Dolores Pacheco.

DEPOSITION OF ANTONIO MARIA PICO.

United States District Court,
Northern District of California.

San Francisco, November 11, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Antonio Maria Pico, a witness produced on behalf of the Claimants in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: The United States Attorney by Edmund Randolph; A. C. Peachy for Claimants.

Questions by Attorney for Claimant.

Question 1.—Your name, age, and place of residence?

Answer 1.—Antonio Maria Pico; 48; I live at San Jose in the County of Santa Clara.

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Ques. 2.—How long have you lived in California? How long in San Jose? What public offices, if any, have you held?

Ans. 2.—I was born in California, and I have lived here ever since. I have lived in San José since the year 1852. In the year 1835, I was Alcalde at San José. In 1844 and 1845 I was also Alcalde of San José. And in 1849 I was Prefect of San José. I was also a Captain in the Military Organization of California.

Ques. 3.—Look at the Documents marked "C. D." and "A. B." annexed to the deposition of José Fernandez, a witness produced on behalf of the Claimants on the 6th November 1857, and say if you are acquainted with the handwriting and signatures of the various instruments contained in those documents, and state your means of knowing them.

Ans. 3.—The paper marked "C. D." is in the handwriting of Gutierrez; the signatures to it are those of Manuel Castro and myself. The certificates appearing on the stamped paper on the third sheet of Exhibit "C. D." and signed by Jesus Vejar, Eusebio Fernandez, Loreto Corona, and G. W. P. Bissell, are written and signed by parties whose handwriting and signatures I am not acquainted with. The Exhibit "A. B." is in the handwriting of Salvio Pacheco, and the signatures to it are those of Pedro Chaboya. I know the handwriting of Pacheco and Chaboya because I have seen them write. I also know the signature of Castro because I have seen him write.

Ques. 4.—Was the signature of Manuel Castro on said Document Exhibit "C. D." above referred to, made in your presence by the said Castro, at the time it purports to have been written, and was your name signed by yourself at that time to the said Document?

Ans. 4.—Yes.

Ques. 5.—Look at the Document now shown you bearing the superscription "*Posesion de la Mina de Sta Clara. Año de* 1845," being the document produced by S. O. Houghton, a witness produced on behalf of the claimant, on his examination taken in this case on the 23d October, 1857, and being referred to by the said Houghton in his third answer on his direct examination, and state, if you can, in whose handwriting are the various instruments in the said document contained, and whose are the signatures to said instrument, and if the said signatures are genuine, with your means of knowing them to be so.

Ans. 5.—The Decree on the Margin of the first paper in this document is in the handwriting of Salvio Pacheco, the signature to it is that of Dolores Pacheco. The signature to the first paper is that of José Castro, the handwriting of the first paper in form resembles that of Benito Dias; the handwriting of the second paper is that of a person named Castaneda, the signature to it is Castillero's; the handwriting of the third paper I think has some resemblance in form to that of Benito

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Dias, I cannot say positively that it is his, because there were a great many persons who took part in the writing of the papers connected with this transaction; the signature to the third paper is that of Andres Castillero. I have an idea that the fourth paper is in the handwriting of Gutierrez, the signatures to it are those of Antonio Suñol, José Noriega and myself. I know the handwriting of Salvio Pacheco because he was officially connected with me in the Courts. I know the signature of Dolores Pacheco, because I have seen him write when he was Alcalde. I believe the handwriting of the first paper to resemble the handwriting of Benito Dias, because I have seen him write, though not frequently. I am not willing to swear positively that it is the handwriting of Benito Dias, it also bears a slight resemblance to the handwriting of Castaneda, the handwriting of Dias was not always uniform. I know the signature of José Castro because I had official intercourse with him when I was Alcalde, at one time he used to make a flourish to his signature differently from what he subsequently made, but still I know his signature. I know the handwriting of Castaneda officially when he was Secretary of Gen. Castro. I cannot state positively in whose handwriting the third paper is, but the signature to it I know to be the signature of Andres Castillero because I have seen him sign his name often. The handwriting of the paper itself may also be Castillero's. I know the handwriting of Gutierrez because when I was Alcalde I employed him to write for me, at the time of the possession. I have also seen him write. I know the signature of Antonio Suñol, and José Noriega, because they were signed in my presence as witnesses.

Ques. 6.—Was the document signed by yourself as Alcalde, and by Suñol and Noriega as attesting witnesses, said document being the last of those contained in the document referred to, signed by yourself and the said attending witnesses at the time it purports to have been made?

Ans. 6.—Yes. It was.

Ques. 7.—Examine again the handwriting of the body of the last named instrument attentively, and state with what degree of certainty you believe it to be in the handwriting of Gutierrez?

Ans. 7.—I consider it the handwriting of Gutierrez, but I think it was written rapidly, he wrote slowly or rapidly as he chose.

Ques. 8.—Was Pedro Chaboya ever Alcalde of San José, and if he was, at what time?

Ans. 8.—In 1846 he acted as Alcalde together with Pacheco. He was Alcalde or Justice of the Peace. He was also Alcalde at other times. He was in authority in 1846, I think he was acting as substitute.

Ques. 9.—Are Antonio Suñol and José Noriega, the attesting witnesses to the last instrument in writing in the document concerning

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which you have been testifying, still living, and if yea, where do they reside?

Ans. 9.—They are both alive, living in San José.

CROSS EXAMINATION.—QUESTIONS BY UNITED STATES ATTORNEY.

Ques. 1.—When was the first time you ever heard of this mine?

(Objected to.)

Ans. 1.—The first I heard were conversations with Pedro and Luis Chaboya, and Robles; on different occasions afterwards Suñol told me that he had assisted them by giving them several things to see if they could ascertain what kind of metal that was, and they never could ascertain what it was.

Ques. 2.—About those times did you never hear anybody else speak of this mine, was it a secret between the Chaboyas, Suñol, and yourself, or was it commonly talked of?

(Objected to.)

And. 2.—It was commonly talked of.

Ques. 3.—How long ago is it since it was commonly talked of?

(Objected to.)

Ans. 3.—A great many years since.

Ques. 4.—About how many years, beginning with about what year?

(Objected to.)

Ans. 4.—I first heard the mine spoken of in the year 1835; in the year 1845, when Castillero first came to San José, the matter had been forgotten there, it was no longer spoken of because it was not known whether it was a gold or a quicksilver mine or what it was, and Castillero was the first person who knew the metal.

Ques. 5.—And what had Robles to say about it when it was first spoken of?

(Objected to.)

Ans. 5.—He said that they had been there at working, breaking stone, but that they were unable to ascertain what kind of metal it was.

Ques. 6.—By what name was this mine known in those times?

(Objected to.)

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Ans. 6.—It was known under the name of the mine of the Chaboyas.
Ques. 7.—When was it first known as the mine of Santa Clara?

(Objected to.)

Ans. 7.—In Castillero's time.
Ques. 8.—When was it first called New Almaden?

(Objected to.)

Ans. 8.—It was first called New Almaden in Castillero's time also. It was called by both names, but that of New Almaden was latterly more generally used than that of Santa Clara Mine.
Ques. 9.—What do you mean by latterly?

(Objected to.)

Ans. 9.—I mean to say that when Castillero took possession of the Mine it was publicly known as the New Almaden Mine or the Santa Clara Mine.
Ques. 10.—Do you mean that Castillero gave it the name of New Almaden?

(Objected to.)

Ans. 10.—I don't know who gave it that name, but in Castillero's time I have heard it called by that name.
Ques. 11.—When you say in Castillero's time, and when Castillero took possession, do you mean that this Mine was called New Almaden at the time of the execution of the last paper in the document produced by S. O. Houghton, which you have testified this morning was signed by yourself and by Antonio Suñol and José Noriega as attesting witnesses, now shown you?

(Objected to.)

Ans. 11.—No; when that paper was executed the Mine was not called New Almaden, it was so called afterwards.
Ques. 12.—Why then did you say when Castillero took possession, and in the time of Castillero;—what did you mean?

(Objected to.)

Ans. 12.—I mean that after Castillero took possession of the Mine and while he was working it, it got the name of New Almaden.
Ques. 13.—What do you mean when you say, while he was working it. What do you refer to?

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(Objected to.)

Ans. 13.—I mean since the Mine was first begun to be worked until now it has been called New Almaden.

Ques. 14.—Since it was first begun to be worked by whom, and in what year?

(Objected to.)

Ans. 14.—By Castillero. In the year 1845, at the time of the possession.

Ques. 15.—Then it was not Castillero who gave it the name of Santa Clara? Who was it that gave it the name of Santa Clara, and when?

(The form of this question objected to as tending to mislead the witness, by stating in substance that he has said that Andres Castillero.)

(Question withdrawn.)

Ques. 16.—Was it then or was it not Castillero who gave to this Mine the name of Santa Clara? Who gave it that name, and when?

(Question objected to as leading.)

Ans. 16.—I don't know who gave it this name; it was called so formerly in the time of the Fathers. The Indians used to go there for yellow paint for the Church, but it was a mine that was not worked.

Ques. 17.—What have you heard from the old inhabitants of the Pueblo of San José and the Mission of Santa Clara concerning the first knowledge that civilized people obtained of this Mine, how long had its existence been known, and in what manner was it brought to their knowledge?

(Objected to.)

Ans. 17.—I have not heard any one say when the existence of the Mine was first known, nor how it was discovered, nor when.

Adjourned until to-morrow, Thursday, Nov. 12, 1857, at 11 A. M.

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SAN FRANCISCO, November 12, 1857, 11 A. M.

Examination of Antonio Maria Pico, a witness produced on behalf of the Claimant, continued.

PRESENT: The United States Attorney by E. Randolph; A. C. Peachy for Claimant.

Ques. 18.—Then you have heard no tradition among the old people concerning this Mine?

(Objected to.)

Ans. 18.—I heard no tradition amongst the first inhabitants touching this Mine. All that I heard was from the persons whom I have named.

Ques. 19.—Was it only since the year 1835, about which time you remember having heard Robles, the Chaboyas' and Suñol talk about the Mine, that the Indians were accustomed to go there to get yellow paint for the Church? Had it not been the custom of those Indians from the time of the earliest inhabitants?

(Objected to.)

Ans. 19.—In the year 1835 it was said in San Jose that the Indians were in the habit of going to the mine for paint, but I do not know whether they went in the time of the earliest inahbitants.

Ques. 20.—For how long a time before 1835 had the Indians been accustomed to go to the mine for paint, according to the report you may have heard among the old inhabitants?

(Objected to.)

Ans. 20.—I do not remember how long.

Ques. 21.—Were they accustomed to go there at all before the year 1835, according to the old inhabitants?

(Objected to.)

Ans. 21.—I do not remember to have heard how long prior to the year 1835 they had been accustomed to go there.

Ques. 22.—When did you come to live in San Jose?

(Objected to.)

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Ans. 22.—In the year 1832 I lived on a ranch near San Jose, and in the year 1854 I went to live at San Jose. This is as well as I can remember.

Ques. 23.—Have you known Antonio Suñol ever since that time, and where has he been living?

(Objected to.)

Ans. 23.—I have known him since then; since then he has lived at the Mission of San Jose, at the Pueblo of San Jose, and at the ranch where I lived near San Jose.

Ques. 24.—Did you not hear in 1835 that this mine contained quicksilver?

(Objected to.)

Ans. 24.—No, I heard nothing of that.

Ques. 25.—What mineral was the mine supposed to contain?

(Objected to.)

Ans. 25.—I did not know what it was, I did not hear what the supposition was.

Ques. 26.—Did you not hear after 1835 and before the time of Castillero that the mine contained quicksilver? During that interval what metal was it supposed to contain?

(Question objected to as being leading.)

Ans. 26.—During the period mentioned I did not hear that the mine contained quicksilver; during that time there was no supposition as to what the mine contained: it was through Castillero that the contents of the mine were ascertained.

Ques. 27.—Did you not hear Antonio Suñol in the year 1835, or at some time afterward, and before the year 1845, say that the mine contained quicksilver? What did you hear him say that he supposed the mine contained?

(Question objected to, first, as being leading; second, as asking hearsay.)

Ans. 27.—I do not remember having heard Suñol say what the mine contained, during the time mentioned, nor what he supposed it contained.

Ques. 28.—Was it a short time before or a short time after the execution of this instrument, viz: the last instrument in the Doo-

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ument produced by S. O. Houghton, signed by you and witnessed by Antonio Suñol and Jose Noriega, that you first heard their mine called New Almaden?

(Question objected to.)

Ans. 28.—A little before or after the execution of said paper the mine got the name of New Almaden; this is my opinion, I cannot be positive, to avoid lying. I do not remember exactly when I first heard the name of New Almaden; after the discovery the mine was known under the name of New Almaden.

Ques. 29.—Look at Exhibit C. D. attached to the deposition of Jose Fernandez, now shown you, and which exhibit you have testified was signed by Manuel Castro and yourself, and signed by Castro in your presence, and tell all you know about the execution of that paper. How came it to be signed by Castro in your presence? When and where, and under what circumstances?

Ans. 29.—It was executed at the Mission of Santa Clara; it is a copy of the original, Castro being prefect and I Alcalde. It was intended to be a copy of the original he signed in my presence, because we were together. I do not remember when it was, but the paper itself will show. I think it was made at the request of the parties mentioned in it. I do not remember for what purpose it was made. The paper was executed in Father Real's room where he lived with Castillero. I do not know whether we signed with the same pen, we were all there together, we signed at the same table.

Ques. 30.—Are the Rubrics after the name of Manuel Castro and your name, respectively, your respective rubrics? What rubrics are those on the first page in the margin? Are not the exhibits "C D" "T R" "M A" "X Y" all in the hand-writing of Gutierrez manifestly? Campare them with the last paper in the document produced by S. O. Houghton, which you have said you thought was in the hand writing of Gutierrez, and point out any resemblance you may find between the hand writing of these exhibits and that paper.

(Objected to.)

Ans. 30.—The rubrics first mentioned in the last question are those of Mannel Castro and myself. The other rubrics mentioned in said question I think were made by the person who wrote the body of the paper. The papers marked Exhibits "C D" "X Y" "L R" in my opinion are all written by Gutierrez. The hand-writing of the last paper in the document referred to is similar to the hand-writing of the said three Exhibits, the said last paper

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was writen more rapidly than the said three Exhibits, but it is the same hand-writing, in my opinion.

Examination adjourned until 10 1-2 o'clock to-morrow, Nov. 13, 1857.

SAN FRANCISCO, Nov. 13, 1857.

Examination of Antonio Maria Pico, a witness produced on behalf of Claimants, continued.

PRESENT :—United States Attorney, by E. Randolph, A. C. Peachy for Claimant.

Ques. 31.—Were the rubrics on the margin of the "Exhibit C D" there when yon and Castro signed it? Look at Exhibit T R and say whether that is not written rapidly and heavily with a coarse pen, and say whether you find any resemblance between that Exhibit and the last writing in the document produced by S. O. Houghton above referred to.

Ans. 31.—I do not remember whether the rubrics on the said margin were there or not when Castro and I signed; I think there is a resemblance between the hand-writings of the two papers referred to in the last question, the I's and P's resemble each other, I think that both are in the hand-writing of Gutierrez, in form they resemble his; Exhibit T R. is written rapidly, heavily, and with a coarse pen.

Ques. 32.—In the Exhibit C D, signed by Manuel Castro and yourself, which of you was the certifying officer, and which the witness. Was it a correct copy, and if so, how do you know it was a correct copy?

Ans. 32.—I signed as a witness, and Manuel Castro was the person who gavé the certificate; it was a correct copy of the original. I know it was correct because we compared it, Castro and I, with the original. I also compared it with the original.

Ques. 33.—Then can you not say whether those rubrics were on the margin or not at the time you compared it and signed it?

Ans. 33.—I think they were probably there also, but I only examined the contract; I only examined the body of the contract.

Ques. 34.—Before whom was that original celebrated from which you took the copy?

Ans. 34.—Before the Prefect Manuel Castro, and myself as Alcalde.

Ques. 35.—Do you mean that it was celebrated twice, once be-

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fore the Prefect Castro and once before you, or that it was celebrated before you both together, and if the latter, what manner of celebration was that, under what law or by what custom?

Ans. 35.—We were both together when the original copies were made, and when this copy was certified.

Ques. 36.—I do not speak of copies. I repeat my last question with regard to to the celebration; by which I mean the execution of the original contract.

Ans. 36.—The celebration of the original contract took place before Don Manuel Castro; I being there also.

Ques. 37.—How do you know that it was this contract which was executed before Don Manuel Castro, you being present; were you attesting witness and knew the contents of the paper, or what are your means of knowledge?

Ans. 37.—I know that this was the contract which was celebrated before Don Manuel Castro, because I considered myself there as a witness, and read the paper and knew its contents.

Ques. 38.—Who were the parties to that original contract; at what time was it celebrated; what was done with the original; and where is it now?

Ans. 38.—The parties were the same that are mentioned in this copy; it was celebrated on the day of the date of the contract, which is shown by this copy; I do not know what was done with the original, it probably remained in the hands of the parties interested, but latterly I have heard that Mr. Forbes had it.

Ques. 39.—What Mr. Forbes?

Ans. 39.—Mr. Forbes of Santa Clara.

Ques. 40.—At what place was the original contract celebrated?

Ans. 40.—At the Mission of Santa Clara.

Ques. 41.—Was not the original contract deposited in Santa Clara in the house in which it was signed, or in the Jusgado of which you were judge in the Pueblo of San José?

Ans. 41.—I cannot remember, although I have been trying to remember.

Ques. 42.—On the trial in the cause of Tobin vs. Walkinshaw, in the Circuit Court of U. S., Districts of California, Northern District, I find by the notes of Judge Hoffman, one of the Judges who presided on that trial, that you testified concerning this contract of partnership: viz:

"There existed a writing of partnership between Castillero and "others; they were made in 1845; the contract itself would tell the "time; It was before the concession was made; I did not know the "contents of the articles; the partners were Castillero, Castro, el "Padre and the Robles; the articles were executed before myself as "Alcalde; it was signed by General Castro, El Padre Real, the Ro-

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" bles, and Castillero; they all signed in my presence; the original " was deposited in Santa Clara, in the house where it was signed; it " was deposited in the Jusgado of which I was Judge in San José; " since I left there I don't know what became of those records, they " may be there still."

Note the difference between your testimony then and to-day, and tell me how you reconcile those differences; and by the same notes you are made to say, " Don't remember whether Castro was present at the execution of the original "; how do you reconcile that statement also, with your present testimony?

Ans. 42.—I cannot say more than what I have already said before the Judges, and it is what I remember; I mean that all I said before the Judges is true, or it is what I remember best.

Ques. 43.—Is that the only explanation that you can give of the contradiction between the statements which you made before the Judges and the statements which you make now?

Ans. 43.—It is; so as not to contradict, by mistake, what I have already said.

Ques. 44.—Have you a very bad memory; can you not recollect for a year your declaration under oath; can you not recollect facts as they occurred in your own presence?

Ans. 44.—I forget things which I have stated before, because I have not the head to answer questions upon questions, they confuse you.

Ques. 45.—In this document now shown you, being the one produced by S. O. Houghton before referred to, how many different handwritings do you find exclusive of the signature, in the four different instruments contained in this document?

Ans. 45.—The superscription is one handwriting; the decree on the margin is another; Castro's petition is another; Castillero's first representation is another. I cannot know whether the handwriting of Castillero's second representation is the same as the handwriting of Castro's petition; in my opinion the handwriting of the act of possession is the same as the handwriting of the superscription, the handwriting of the act being smaller.

Ques. 46.—Are not the two representations of Castillero and the act of possession each in a different handwriting; to those three papers, how many different signatures are there; and is any one of the three handwritings that of any one of the signers?

Ans. 46.—The said three papers are in different handwritings; there are five signatures to them, four of which are different; none of the said papers are in the handwriting of either of those who signed them.

Ques. 47.—As two of these short papers were presented to you as Alcalde, and the other was executed before you as Alcalde, can you

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explain why seven different hands were employed in the making and signing of them ?

Ans. 47.—I signed the last one as Alcalde, and Suñol and Noriega signed as witnesses ; the petitioner, Castillero, signed the petition ; Castillero's second representation may have been written by himself, but I am not sure, because it also resembles the handwriting of Benito Diaz ; there were so many different hands, probably because it suited them-

Ques. 48.—When was that document which purports to be an act of possession executed ?

Ans. 48.—I do not remember, but it is a legal document.

Ques. 49.—Was it, or was it not, executed as it purports, at the Jusgado of the Pueblo of San José ?

Ans. 49.—Most likely it was the Jusgado, but I do not know whether it was there or at Suñol's house, it was at the one of the two places.

Ques. 50.—Had you, as Alcalde, any Secretary in those days, and if so, who was it ?

Ans. 50.—Fernandez was my Secretary, but I employed Gutierrez to write.

Ques. 51.—Did you employ Gutierrez to write any one of these papers, and if so, which, and where ?

Ans. 51.—I employed him to write them all except the petitions ; he was employed in writing the paper which I have already named as being in his handwriting, to wit, the act of possession, and the contract of partnership ; I employed him with the consent of the parties interested.

Adjourned until Nov. 14th, 1857, at 1 P. M.

San Francisco, Nov. 14, 1857.

Examination of Antonio Maria Pico, a witness produced on behalf of the Claimant, continued.

Present : U. S. Attorney, by E. Randolph ; A. C. Peachy, for Claimant.

Ques. 52.—The Fernandez who was your Secretary, is he the same person who was examined here a few days ago ?

Ans. 52.—He is the same person.

Ques. 53.—The house of Suñol, of which you have spoken, is it the same house in which he now resides in the Pueblo of San José ?

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Ans. 53.—It is not the same; the house of which I spoke was taken away by him, and he built a new one on the same lot.

Ques. 54.—The Gutierrez of whom you have spoken, what was his occupation, and where was he then engaged in his business?

Ans. 54.—During some time he kept a school near Suñol's house; he was engaged in his business in the neighborhood of the Pueblo.

Ques 55.—Was he keeping a school near the house of Suñol at the time that he wrote out the act of possession?

Ans. 55.—I do not remember whether he still kept his school there; it may be that he was still there.

Ques. 56.—Did he write the act of possession at the Jusgado, at the house of Suñol, or at the school house?

Ans. 56.—I do not remember where he wrote it.

Ques. 57.—Did he not write it at the time when you, or the parties interested, with your knowledge, employed him to write it?

Ans. 57 —He did.

Ques. 58.—Then have you no recollection at all as to where he wrote it? What recollection have you about it?

Ans. 58.—I do not remember exactly whether it was at the Jusgado, or at Suñol's house, or elsewhere within my jurisdiction; because the Alcalde had jurisdiction over the whole Pueblo.

Ques. 59.—Did he write it in your presence, or on the same day when you signed it, just before you signed it?

Ans. 59.—I do not remember, but my opinion is, that it was all made on the day on which we signed it.

Ques. 60.—Where was the boundary of the Pueblo in the year 1845, on the side towards the Mission of Santa Clara?

Ans. 60.—The Guadalupe River was the boundary on that side, but the jurisdiction of the Alcalde extended to the Arroyo San Franciquito—the Corte Madera.

Ques. 61.—Was not the Jusgado and the house of Suñol both situated in the Pueblo of San José?

Ans. 61.—They were.

Ques. 62.—How is it that, on your direct examination, you spoke doubtfully as to the handwriting of the act of possession, and now you say that you, or the parties interested, with your knowledge, employed Gutierrez to write that paper; if he was employed in this way, why were you not certain about that handwriting?

Ans. 62.—I have always said that Gutierrez was the one who wrote the act of possession, but that there were many who wrote in the matters concerning the mine; there were several, Castaneda and others.

Ques. 63.—Were all those persons and Gutierrez writing in the matters concerning the mine at the same time?

Ans. 63.—I do not remember.

Ques. 64.—Recall all the names of those who were engaged in writ-

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ing in the matters concerning the mine, or who were present at the time of these meetings, either as parties interested, or as witnesses, or otherwise, to the best of your ability now to remember.

Ans. 64.—I remember that Suñol and Noriega were present as witnesses, and I as Alcalde; I do not remember who else was present at that moment.

Ques. 65.—Are those all you can remember; was not your Secretary, Fernandez, present at the writing of these papers, or when the act of possession was executed by yourself, and witnessed by Antonio Suñol?

Ans. 65.—I do not remember whether Fernandez was there or not; Those whom I have named are the only ones whom I remember as having been present at that moment.

Ques. 66.—Was it not customary for the Alcalde to employ their Secretaries in writing out official papers, and as attesting witnesses to their official acts; why was it that your Secretary wrote none of the papers concerning this mine, and that other persons were called to attest your act of possession?

Ans. 66.—It was customary, but they could call in others; my Secretary did not write any of these papers, and other persons acted as witnesses, because I chose to do it in that way; it suited me to do so.

Ques. 67.—When your act of possession was all finished what did you do with it?

Ans. 67.—Gutierrez kept the papers to arrange them, and place them on record; he took charge of everything.

Ques. 68.—How many papers were there? What arrangements were there to make; and this being an official act, and you being Alcalde, and keeper of your own records, why did you not keep the papers and file them away yourself?

Ans. 68.—I do not remember how many papers there were; it was necessary to put a cover and superscription upon them. The Secretary is the person who has charge of the Jusgado, and Gutierrez kept them to deliver them to the Secretary.

Ques. 69.—Was there any other paper but the document which has been produced by S. O. Houghton? Was the original contract of partnership one of the papers which remained with Gutierrez to arrange and file away in the archives?

Ans. 69.—The paper first mentioned was one of them, but I do not know whether the last mentioned paper was one of them or not.

Ques. 70.—Do you know what are "*rotulones*"; and if so, what are they?

Ans. 70.—I do not understand that word, it has a thousand meanings. As we understand it, it means the letters which are placed on the outside of an Expediente, large letters.

Ques. 71.—Speaking of Mines, what are "rotulones"?

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Ans. 71.—I understand that they are public Notices placed in some public places, notifying the public that any person who has any right or claim must appear before the Judge, or if not at the expiration of the time possession will be given.

Ques. 72.—Who put up the "rotulones" for this Mine; where were they put up, and for how many days?

(Question objected to.)

Ans. 72.—They were placed in different places in the Jusgado, I think for sixty days, but I do not know what the law states; I am not sure as to the time, nor as to what the law states.

Ques. 73.—What do you mean by different places in the Jusgado? Suppose this room was the Jusgado, and explain what you mean.

(Question objected to.)

Ans. 73.—I mean that they were placed in the most public places in the Court Room.

Ques. 74.—Did you at that time inform yourself of what the law required? Did you post up the "rotulones" for all the days required by law?

(Question objected to.)

Ans. 74.—I knew at that time what the law required; I do not remember well, but I believe I complied with the law. Castillero and I had the law, the Ordinanzas de Mineria.

Ques. 75.—In the first petition of Castillero which you have before you, he says that he had discovered this Mine; why did you receive that petition when you knew it was untrue, because the Chaboyas had occupied it in 1835, and the Indians had long been accustomed to bring paint from it for the Church, as you have before testified?

(Question objected to; first, because the witness has not said nor has it been in any way proven that Castillero's representation was untrue; secondly, because the facts mentioned in the question for the purpose of proving Castillero's representation to have been untrue do not in fact prove it; third, because the witness is not on trial on impeachment; fourth, because it is not competent to inquire into any irregularities which may have preceded the act of registry and the concession.)

Ans. 75.—Castillero was the first who brought to light the metal,

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the quicksilver. He produced before me the metal as a proof of what he said.

Ques. 76.—Read that petition; does it say anything about quicksilver? What metal does it say the Mine contained?

(Objected to.)

Ans. 76.—The petition speaks of gold and silver, but it was known that it contained quicksilver, because I saw it myself.

Examination adjourned until 11 o'clock, November 16, 1857.

San Francisco, November 16, 1857.

Examination of Antonio Maria Pico, a witness produced on behalf of the Claimant this day, continued until to-morrow, Tuesday, November 17, 1857, at 11 A. M.

San Francisco, November 17, 1857.

Examination of Antonio Maria Pico, a witness produced on behalf of the Claimant this day, continued until to-morrow, Wednesday, November 18, 1857, at 11 A. M.

San Francisco, November 18, 1857.

Examination of Antonio Maria Pico, a witness produced on behalf of the Claimant in this case, this day continued.

Present: The United States Attorney by Edmund Randolph; A. C. Peachy for Claimant.

Ques. 77.—If it was known that the Mine contained quicksilver when that first petition was presented to you, why was not quicksilver expressed in the petition? Why was it not mentioned along with gold and silver? Was not quicksilver at that time considered a valuable metal?

(Question objected to as irrelevant.)

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Ans. 77.—I do not know why quicksilver was not mentioned in that petition. It was known at that time that quicksilver was a precious metal.

Ques. 78.—If it was known at the date of the first petition that the Mine contained quicksilver, how did it happen that eleven days afterwards Castillero presented a second petition in which he declared that he had made the discovery of quicksilver since the date of his first petition? Before answering this question look at the second petition of Castillero which you now have before you.

Ans. 78.—I do not remember why this was done, it is a very old affair and I cannot remember.

Ques. 79.—If the affair is so old that you cannot remember how it was conducted, might you not also be mistaken about these papers having been presented to you at all at that time?

Ans. 79.—I remember the documents of course, because I saw them, and left them in the hands of Gutierrez. I had them as a person in authority.

Ques. 80.—You have said thai you had the "*Ordinanzas de Mineria;*" did you have them in a book called "Ordinanzas de Mineria?"

(Question objected to.)

Ans. 80.—I think so.

Ques. 81.—Would you know the book if you were to see it again?

Ans. 81.—I do not know whether I would know the book now or not, because a long time has elapsed, and it was a matter in which I was not interested at all.

Ques. 82.—Did you ever see more than one book marked "Ordinanzas de Mineria?" If you have seen more than one were they not all exactly alike?

(Question objected to.)

Ans. 82.—That was the only one which I have seen.

(The United States Attorney here offers to hand to the witness a book marked "Ordenanzas de Mineria," and to ask the witness whether that was the same book that he had or whether the book resembled it in size and appearance.

The Attorney for the Claimant asks the Attorney for the United States if he is going to file the book in this cause. He says he is not. The Attorney for the Claimant objects to the United States Attorney asking the witness any question about said book, and asks for a decis-

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ion of that point by the Court before the examination shall be further proceeded with.

The Court not being in session at this precise time to pass upon this question, Attorney for the United States passes it for the present.)

Ques. 83.—Look now at the last instrument in the document produced by S. O. Houghton, which you now have before you and which you call your act of possession, the same which you signed by yourself as Alcalde, and by Antonio Suñol and José Noriega as attesting witnesses, and say, if you can, why the day of execution was left blank, viz. thus: "Diciembre de mil ochocientos cuarenta y cinco?"

Ans. 83.—I suppose it was forgotten in the hurry.

Ques. 84.—What do you mean by the hurry, what occasion was there for haste?

Ans. 84.—There was no hurry, but as there was no malice, nor fraud, nor bad intentions at that time, we did not pay particular attention to the dates. We did not mind that.

Ques. 85.—Was not this instrument the most important paper connected with the Mine? Was not the date, taken in connection with the date of the petitions, a very important part of this instrument? Can you refer me to any other paper important or unimportant relating to this Mine in which the date is left blank?

(First part of the question objected to as simply asking the witness' opinion; and the second part of it asks of the witness a reference to papers with which the Attorney of the United States is more familiar perhaps than the witness, and certainly has the opportunity of making himself so if he is not; and further, because it asks the witness to explain, or construe, or give his opinion, about written documents.)

Ans. 85.—I think that is the most important of the papers relating to the Mine. The date is an important part of it. I do not know whether there is any other paper relating to the Mine in which the date is omitted, or in which the date is left blank.

Ques. 86.—When you with said Suñol and Noriega, signed said paper, was the preceding writing on it, or was it blank and the writing put on afterwards?

Ans. 86.—When we signed, everything was finished, the act was all written.

Ques. 87.—Why did you sign an act which purported to grant three thousand varas in all directions? Did you find any authority for that in the "Ordenanzas de Mineria?"

(Question objected to. First, because it enquires into the wit-

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ness' private motive in his performance of an official act, and Secondly, because the latter branch of the question is, a simple inquiry into the witness' opinion of the law.)

Ans. 87.—Because Castillero told me that he required three thousand varas, and then I told him to take them in all directions. He told me that he had that right by reason of his being the first discoverer of the metal. According to what Castillero told me I believed that I as Alcalde had authority to do that, there being no other "Juez de letras" (Judge of Letters.) He was a man learned on all those subjects. He told me that I was "Juez de Letras" and I considered myself such there being no other "Juez de Letras."

Ques. 88.—Was not the Pueblo of San Jose in the second "Partido" or District? Was not the Pueblo of San Francisco de Asis the head of the District at that time? Was not Guerrero Alcalde of first nomination in San Francisco, and as such did he not have the power of Judge of first instance, to the exclusion of yourself and the other Alcaldes in that "Partido" or District, and was he not the only Alcalde entitled to be called a "Juez de letras" or Judge of Letters?

(So much of above question as asks the witness' opinion of the law, objected to.)

Ans. 88.—San Jose was in the second District; I do not remember whether San Francisco de Asis or Monterey was the head of the District; I do not remember whether Guerrero was Alcalde at that time; I do not know whether he had a right to be called "Juez de Letras."

Ques. 89—What sort of a possession is this of which you have spoken? Who went with you to the mine? Who were there present? What Surveyor did you have, and what instruments? What measurements did you make, what works did you perform? How many stakes did you drive, where, and by whom were they driven? Tell all that occurred, how long you stayed there, when you returned and to what place? Say also what Mining Professor was there present.

Ans. 89.—Suñol, Noriega, El Padre Real, Castillero, Gutierrez, and I think Fernandez also, went with me to the mine; other persons went, but I do not remember who they were. These same persons arrived at the mouth of the mine, we were there some time, and I sent for Sergeant Jose Reyes Berryesa to his Rancho. These were there. There were also other persons there, but I do not remember who they were. There was no Surveyor. Castillero had a small pocket compass. I told Castillero that no meas-

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urement could be made with a cord because the ground was very uneven ; that he might take the three thousand varas within the Sierra, (mountains) in every direction; everything that was spoken there was written in a blotter; all that I said to Castillero ; this was the only work we performed. I do not remember having driven any stakes; I do not remember whether any were driven or not. We remained a considerable length of time at the mine, I do not know how many hours we were examining everything ; we returned to San Jose, where we arrived very late. The only Professor of Mining who was there was Castillero, because he understood it.

Ques. 90.—Was the land of which you say you thus gave possession in its form a square or a circle ?

(Question objected to on the ground that the act of possession is in writing, and it is not competent to explain or to vary this instrument by parole testimony.)

Ans. 90.—I do not know whether it was round or square, because I made the division in different directions, as I proposed to Castillero, that is to say, that he should take it where it was vacant, or in the mountains, because the Rancheros (owners of Ranches,) would not have mountains; they wanted plains only.

Ques. 91.—Who did you send after Berreyesa ? Did you send from the mine ? Did you send a written notice or a verbal one ? How long did you wait for him ? How did he come ? From what place did he come, and how long did he stay ?

Ans. 91.—I sent for him by his own son; I sent from the mine. I sent a verbal notice, because I had told him previously that I was going to the mine at that time; he soon came; I waited for him a short time, he came on horseback from his Rancho; he remained until we left.

Ques .92.—Are the Sergeant Berreyesa and that son of his alive? Where was Gen'l Jose Castro in the month of November 1845, and who was his Secretary at that time, if he had one ?

Ans. 92.—Sergeant Berreyesa is dead, but I do not know whether that son is dead or alive, because I dont remember which of the sons it was, but I know it was one of them. I don't know where Gen'l Castro was in that month, Castaneda was his Secretary but I do not know whether he was such during that month, he may have been.

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EXAMINATION IN CHIEF RESUMED.

Ques. 1.—How long was it before you were examined in the Case of Tobin v. Walkinshaw referred to in the Cross Examination, that you had read the "Escritura de Compania?"

Ans. 1.—I saw it before it was shown to me in Court, but I do not remember how long before.

Ques. 2.—Since you testified in that case have you had any conversation with James Alexander Forbes about either the original articles of partnership or the copy of the same shown to you during this examination?

(Question objected to as leading and improper to be asked on the direct examination, and as introducing new matter not referred to in the first examination in chief.)

Ans. 2.—I had a conversation with Mr. Forbes touching the original paper referred to, since I testified in (Question withdrawn) that action, in which he told me that he had found the original "Escritura de Compania," and I replied to him that he ought to put it in evidence to show that my testimony was true.

(Attorney for the Claimant finding that he was mistaken by supposing that the witness had testified on his cross-examination that James Alexander Forbes had told the witness that he had the original in his possession, withdrew the question before the answer was written down.)

Ques. 4.—Have you ever had a conversation with any person, since you gave your testimony in the suit of Tobin v. Walkinshaw referred to in your cross-examination, concerning the original "Escritura de Compania" or the copy of the same shown to you on this examination? If yea, state with what person, and what was said by him in that conversation touching the said document.

(Question objected to because the unsworn declarations of persons with whom the witness may have conversed are not competent evidence.)

Ans. 4.—I had a conversation with Mr. Campbell, my son-in-law, in which I told him that I had been informed by Mr. Forbes, that he, Forbes, had found among his papers the original "Escritura de Compania." I stated that he ought to present it to the Court to show the truth of my testimony.

Ques. 5.—How did you learn that Mr. Forbes had that paper

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in his possession?

(Objected to.)

Ans. 5.—He told me so himself that he had it. He told me that he found it accidentally among his papers.

(Objected to.)

Ques. 6.—How long since he told you so?

(Objected to.)

Ans. 6.—He told me so a few days after the termination of the suit of Tobin v. Walkinshaw: he came to my house and told me. He said that all that I had stated corresponded with what was written.

(Objected to.)

Ques. 7.—Do you know for what purpose Castillero left California?

(Objected to.)

Ans. 7.—He left to attend to (Question withdrawn.) A Question relating to the "Ordenanzas de Mineria" which has been referred to the Court, is dropped by the United States Attorney.

This disposition is taken subject to all objections, except as to the form of the questions.

ANTONIO MA PICO.

Sworn to and subscribed before me this 18th Nov. 1857.

CUTLER McALLISTER,
U. S. Commr.

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CROSS-EXAMINATION—A. M. PICO—SPANISH.

Preg. 1.—Cuando fue la primera vez que oyo Vd hablar de esta mina.

Resp. 1.—Lo primero que oi fue en conversaciones con Pedro y Luis Chaboya y Robles en differentes occasiones despues Suñol me dijo a mi que les habia ay a dado el en darles algunas cosas para ver si podian *saber* que clase de metal era ese y nunca pudieron saber lo que era.

Preg. 2.—En aquellos tiempos no oyo Vd hablar a otra persona tocante a esta mina fue secreto entre los Chaboyas Suñol y Vd. o era cosa de que todos en general hablaba.

Resp. 2.—Se hablaba mucho de eso entre todos en general.

Preg. 3.—Cuanto tiempo hace que se hablaba de eso entre todos en general.

Resp. 3.—Hace muchos años.

Preg. 4.—Cuanto años hace poco mas o menos y en que año poco mas o menos se empezo a hablar asi de el.

Resp. 4.—Yo oi hablar de la mina primero en el año '35 en el año '45 cuando primero vino Castillero a San Jose la casa ya se habia olvidado alli. No se hablaba mas de eso, porque no se sabia si era mina de oro o de Azogue o de que era, y Castillero fué el primero que conosio el metal.

Preg. 5.—Y que dijo Robles tocante a la mina cuando primero se hablaba de ella.

Resp. 5.—Dijo que ellos habian estado alli trabajando, que mando piedra pero que no pudieron conoser la clase de metal que seria.

Preg. 6.—Bajo que nombre convenia esta mina en aquellos tiempos.

Resp. 6.—Se conocia bajo el nombre de la "mina de los Chaboyes."

Preg. 7.—Cuando se conocio primero como "La mina de Santa Clara."

Resp. 7.—En tiempo de Castillero.

Preg. 8.—Cuando empezaron a llamarlo "Nuevo Almaden."

Resp. 8.—Empezaron a llamarlo Nuevo Almaden en tiempo de Castillero tambier lo llamaban por los dos nombres, pero el de Nuevo Almaden era mas general que el de mina de Santa Clara ultimamente.

Preg. 9.—Cuando dice "ultimamente" que es lo que quiere Vd decir.

Resp. 9.—Quiero decir que cuando Castillero tomo possesion de la mina el publico lo conocio como la mina del Nuevo Almaden o la mina de Santa Clara.

Preg. 10.—Quiere Vd decir que Castillero le dio el nombre de Nuevo Almaden.

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Resp. 10.—No se quien le pondria ese nombre pero en tiempo de Castillero lo he vido llamar asi.

Preg. 11.—Cuando dice Vd en tiempo de Castillero y cuando Castillero tomo possesion quiere Vd decir que esta mina se llamaba Almaden al tiempo que se hizo el ultimo papel en el Documento presentado por S. O. Houghton, que Vd dijo esta mañana que fue formado por Vd y por Antonio Suñol y Jose Noriega como testigos de asistencia que ahora se le muestra.

Resp. 11.—No. Cuando se hizo ese papel la mina no se llamaba Nueve Almaden, asi se llamaba despues.

Preg. 12.—Porque dijo Vd entonces en tiempo de Castillero y cuando Castillero tomo posesion que era lo que Vd queria decir.

Resp. 12.—Quiero decir que despues que Castillero tomo posesion de la mina y mientras que el lo trabajaba se le dio el nombre de Nuevo Almaden.

Preg. 13.—Que quiere Vd decir cuando dice "mientras que el lo trabajaba" a que se refiere Vd.

Resp. 13.—Quiero decir que desde que se empezo a trabjar la mina hasta ahora se ha llamado Nuevo Almaden.

Preg. 14.—Desde que se empezo a trabajar por quien y en que año.

Resp. 14.—Por Castillero en el año '45 al tiempo de la posesion.

Preg. 15.—Entonces fue o no fue Castillero e que le dio a esta mina el nombre de Santa Clara que fui el que le dio este nombre y cuando se lo dio.

Resp. 15.—No se quien le dio este nombre, se llamaba asi anteriormente en tiempo de los Padres. Los Indios iban alli y sacaban pinturas amarillas para la iglesia pero no era mina que se trabaja.

Preg. 17.—Que ha oido Vd de los antiguos habitantes del Pueblo de San Jose y la mission de la Santa Clara tocanto al primer conocimiento que obtuvieron la gente de razon de esta mina; cuanto tiempo sabian que existia y como lo supierion.

Resp. 17.—Yo no ne oido decir cuando se supo primero de la existencia mina; ni como lo discubieron ni cuando.

Preg. 18.—Entonces no ha vido Vd ninguna tradicion entre los antiguos habitantes tocante a esta mina.

Resp. 18.—Entre los fundadores no oi ninguna tradicion tocante a la mina todo lo que yon oi fue de las personas que he nombrado.

Preg. 19.—Fue solamente desde el año 1835 el tiempo poco mas o menos en que Vd oyo hablar de esta mina a Robles los Chaboyas y Suñol. Que los Indios tenian costumbre de ir alli a traer pintura amarilla para la Iglesia. No fue esto la costumbre de aquellos Indios desde el tiempo de los fundadores.

Resp. 19.—En el año '35 se decia en San José que los Indios iban

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a la mina a traer pintura pero no se si iban en tiempo de los fundadores o no.

Preg. 20.—Durante cuanto tiempo anterior al año 1835 tenian los Indios costumbre de ir a la mina a traer pintura segun lo que decian los antiguos habitantes.

Resp. 20.—No me acuerdo cuanto tiempo.

Preg. 21.—Que si tenian costumbre de ir alli jamas antes del año 1835 segun lo que decian los antiguos habitantes.

Resp. 21.—No me acuerdo haber oido decir des de que tiempo anterior el año '35 eso tenian costumbre.

Preg. 22.—Cuando vino Vd a vivir en San Jose.

Resp. 22.—Vine a un Rancho cerca de San Jose en el año '32 y en el año '34 fui a vivir en San Jose; Esto es lo que tengo presente.

Preg. 23.—Desde ese tiempo ha conocido Vd a Antonio Suñol y donde ha vivido el.

Resp. 23.—Lo he conocido desde entonces. El ha vivido desde entonces en la Mision de San Jose y en el Rancho donde yo vivia cerca de San Jose.

Preg. 24.—No oyo Vd decir en el año '35 que esta mina contenia azogue.

Resp. 24.—No; no oi nada de eso.

Preg. 25.—Que era el metal que se suponia que la contenia.

Resp. 25.—No supe que seria, no oi decir que se suponia.

Preg. 26.—Despues del año '35 y antes del tiempo de Castillero, no oyo Vd decir que la mina contenia azogue; durante ese tiempo que se suponia que era el metal la mina contenia.

Resp. 26.—Durante el tiempo mencionado no oi decir que la mina contenia azogue. Durante ese tiempo no habia suposicion sobre lo que contenia la mina. Por Castillero se descubrio lo que contenia la mina.

Preg. 27.—No oyo Vd decir a Antonio Suñol el el año 1835 o despues del año 1835 y antes del año 1845 que la mina contenia azogue; que suponia el que la mina contenia segun lo que oyo Vd decir.

Resp. 27.—No me acuerdo haber vido decir a Suñol lo que contenia la mina durante el tiempo mencionado, ni lo que el suponia que le contenia la mina.

Preg. 28.—Fue poco tiempo antes o poco despues de la execucion de este instrumento que contiene el Documento que presento S. O. Houghton firmado por Vd y formado por Antonio Suñol y Jose Noriega como testigos de asistencia que Vd por la primera vez oyo llamar a esta mina Nuevo Almaden.

Resp. 28.—Poco antes o despues de la execucion de dicho papel fue cuando se le dio a la mina el nombre Nuevo Almaden. Estos es lo que me parece; no lo afirmo para no mentir.

No me acuerdo exactamente cuando fue que yo por primera oi el

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nombre de Nuevo Almaden. Despues del descubrimento se conocia la mina bajo el nombre de Nuevo Almaden.

Preg. 29.—Vea Vd el papel marcado "Exhibit C. D.," perteneciente a la deposicion de Jose Fernandez que ahora se le muestra el cual ha dicho Vd en su testimonio fue firmado por Vd y Manuel Castro en presencia de Vd y diga Vd todo lo que Vd sabe tocante a la execusion de dicho papel. Como sucedio que fue firmado por Castro en la presencia de Vd; adonde cuando y bajo que circumstancias.

Resp. 29.—Fue executado en la mision de Santa Clara (esta es copio de la original) siendo Castro Prefecto y yo Alcalde. Fue hecho como copia de la original; el firmo en mi presencia porque estabamos juntos; no me acuerdo cuando fue pero el mismo papel lo justifica.

Yo pienzo que se hizo a la requisicion de las partes mencionadas en el mismo papel. No me acuerdo con que objeto se hizo; se hizo el papel en el cuarto de Padre Real adonde vivia Castillero y el Padre pintos. No se si firmamos con la misma pluma; estabamos todos juntos; fimamos en la misma.

Preg. 30.—Las rubricas puestas respectivamente a las firmas de Vd y de Manuel Castro son sus respectivas rubricas. que rubricas son esas que estan en el margen de la primera paquina; no estan los papeles marcados Exhibit C. D., X. Y. y T. R. todas escritos en la letra de Gutierrez manifiestamente. Compares los con el ultimo papel en el Documento presentado por S. O. Houghton que ha dicho Vd. que le parecia que estaba escrito por Gutierrez y designe Vd culesquera semejanza que encuentre entre la letra de los papeles marcado Exhibit C. D., X. Y. y T. R. y el dicho papel.

Resp. 30.—Las Rubricas primeramente mencionados en la ultima pregunta son las de Manuel Castro y la mia. Las otras rubricas mencionadas en dicha pregunta me parece que fueron hechas por la misma persona que escribio el cuerpo del papel.

Los papeles marcados Exhibit C. D., X. Y. y T. R., estan todos escritos por Gutierrez en mi opinion La letra del ultimo papel en el Documento mencionado es semejante a la letra de los tres papeles marcados del modo ante dicho, el dicho ultimo papel esta escrito con mas rapidez que los dichos tres papeles pero es la misma letra en mi opinion.

Preg. 31.—Las rubricas que estan en el margen del papel marcado Exhibit C. D., estuvieron alli cuando Vd y Castro lo firmaron? Vea Vd el papel marcado "Exhibit T. R.," y diga se no esta escrito con rapidez y en letra pesada y con pluma gruesa y diga si encuentra alguna semejanza entre la letra del dicho papel marcado T. R. y la ultima letra contenida en el Documento presentado por S. O. Houghton antes mencionado.

Resp. 31.—No me acuerdo si las rubricas que estan en dicho margen o no cuando Castro y yo lo firmamos. Para mi hai semijanza en-

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tre la letra de los dos papeles a los cuales refiere la ultima pregunta, hai semijanza entre las jotas y las Ps. me parece que las dos letras son las de Gutierrez, en firma son semejantes a la letra de el. El papel marcado "Exhibit T. R." esta escrita con pluma y mesa y en letra pesada y escrito con rapidez.

Preg. 32.—En el papel marcado Exhibit C. D. firmado por Vd y Manuel Castro cual de Vds. era el testigo y cual era el funcionario que deba el certificado. Fue copia exacta y si fue como sabe que fue.

Resp. 32.—Yo firme como testigo y Manuel Castro era el que daba el certificado. Fue copia exacta de la original, se que fue exacta porque la comparamos, yo y Castro con el original. Yo tambien lo compare con el original.

Preg. 33.—Entonces no puede Vd decir se esas rubricas estaban o no estaban en el marjen cuando Vd lo comparo y lo firmo.

Resp. 33.—Yo pienso que estavian tambien, pero no examine mas que el contrato. Examine solamente el cuerpo de la contrata.

Preg. 34.—Delante de quirer fue celebrado aquel original del cual saco Vd la copia.

Resp. 34.—Delante de prefecto Don Manuel Castro y de mi como Alcalde.

Preg. 35.—Quiere Vd decir que fue celebrado dos veces, una vez delante del Prefecto Castro y una vez delante de Vd. o que fue celebrado delante de los dos juntos y si de este ultimo modo se hizo que laya de celebracion era esa, y bajo que ley o segun que costumbre era.

Resp. 35.—Estabamos los dos Juntos cuando se secaron las copias originales y cuando se certifico esta copia.

Preg. 36.—Yo no hablo de copias. Repito la ultima pregunta tocante a la celebracion por lo cual quiero decir la execusion de la contrata original.

Resp. 36.—La celebracion de la contrata original se hizo delante de Don Manuel Castro estando yon alli tambien.

Preg. 37.—Como sabe Vd que esta fue la contrata que se celebro delante de Don Manuel Castro, estando Vd alli tambien. Era Vd. testigo de asestencia sabiendo el contenido del papel o como lo sabe Vd.

Resp. 37.—Se que esta fue la contrata que se celebro delante de Don Manuel Castro porque yo consideraba que estaba alli de testigo y lei el papel y sabia lo que contenia.

Preg. 38.—Quienes fueron las partes contratadas en esa contrata original cuando fue celebrado, que se hizo con el original y adonde esta ahora.

Resp. 38.—Las partes fueron las mismas que dice esta copia; fue celebrado el dia de la fecha de la contrata que se se por esta copia no se que se hizo con la original quedaria en manos de los interesados pero ultimamente ho oido decir que el Sõr Forbes lo tenia.

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Preg. 39.—Que Señor Forbes.

Resp. 39.—El Señor Forbes de Santa Clara.

Preg. 40.—En que lugar fue celebrada la contrata original.

Resp. 40.—En la Mision de Santa Clara.

Preg. 41.—No fue depositada la contrata original en la casa donde fue firmado, en Santa Clara ó en el Juzgado del cual era Vd. Juez en el Pueblo de San José.

Resp. 41.—No me acuerdo; no me puedo accordar aunque he estado haciendo recuerdos.

Preg. 42.—El dia de la vista del jucio de Tobin contra Walkinshaw en el juzgado que llaman "The Circuit Court of the United States, Dist. of California," Encuentro que segun las notas del Juez Hoffman uno de los Jueses que oyeron dicha causa que Vd dio el testimonio siguente tocante a esta escritura de compania es decir.

"Existia una escritura de compania entre Castillero y otros: se hacien en 1845. La misma escritura dira la fecha. Fue antes de haberse hecho la concesion. No conocia yo el contenido de la Escritura. Los socios eran Castillero, Castro, El Padre y los Robles. La escritura fue celebrada delante de mi como Alcalde. Fue firmado por el Genl. Castro El Padre Real Los Robles y Castillero Todos ellos firmaron en mi presencia. La original fue depositada en Santa Clara en la Casa donde fue firmada. Fue depositada en el Juzgado del cual yo era Juez en San Jose: Desde que yo sali de alli no se que se habia hecho con aquellos archivos, puede ser que esten alli todavia.

Observe Vd las diferencias que hay entre el testimonio que dio Vd entonces y el que ha dado hoy y diga como puede explicar, o reconciliar de dichas diferencias. Y segan las mismas notas ha dicho Vd. "No me acuerdo si estuvo Castro presente cuando se celebro la original"? Como puede Vd reconciliar esa repuesta tambien con el testimonia que ha dado Vd ahora.

Resp. 42.—No puede decir mas que lo que ya he dicho ante los jueses y es lo que tengo presente: quien decin que todo lo que dige ante los Jueses es la verdad o de lo cual me puede acordar con mas exactitud.

Preg. 43.—Es esa la vinica explicacion que puede Vd dar de las contradicciones que existen en lo que dijo Vd delante de los jueses y lo dice Vd ahora.

Resp. 43.—Si es: Por no contradecirme en lo que ya he dicho por equivocacion.

Preg. 44.—Tiene Vd una memoria muy mala: No puede Vd. acordarse por un año de las declaraciones que ha dado bajo juramento. No puede Vd acordarse de hechos como ocurieron en su misma presencia.

Resp. 44.—Se me olvidad las cosas que he dicho antes, porque no tengo cabaza para responder a preguntas sobre preguntas. Mi confimden.

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Preg. 45.—El los cuatro instrumentos que componen el contenido del Documento ante dicho presentado por S. O. Houghton cuantas letras diferentes encuentra Vd. sin contar las firmas.

Resp. 45.—La caratula es una letra. El decreto en el margen es otra, la peticion de Castro es otra letra. La primera representacion de Castillero es otra letra, la segunda representacion de Castillero no se si es diferente de la peticion de Castro o no. Mi opinion es que el acto de posecion es en la misma letra que la caratula; solamente que es mas pequeña la letra del acto.

Preg. 46.—No esta cada uno las dos representaciones de Castillero y el acto de posecion en letra diferente. Cuantas firmas diferentes tienen esos tres papeles, y esta alguno de los dichos tres papeles escritos en letra de alguno de las tres personas que los firmaron.

Resp. 46.—Los dichos tres papeles estan letra diferente: Hay en ellos cinco firmas de de las cuales cuatro son diferentes. Ninguno de dichos papeles esta en letra de cualquera de los que los firmaron en mi opinion.

Preg. 47.—Como dos de estos papeles cortos fueron presentado a Vd como Alcalde y el otro fue Executado delante de Vd como Alcalde puede Vd explicar porque se emplearon siete manos diferentes en hacer y formarlos.

Resp. 47.—Yo fuice el ultimo como Alcalde y Suñol y Noriega la firmaron como testigos. El que pedia Castillero firmaba la peticion. La segunda representacion de Castillero puede haber sido escrito por el mismo pero no estoy seguro porque se parece la enbien a letra de Benito Diaz. Hubieron tantas manos diferentes porque asi comendiaro.

Preg. 48.—Adonde se hizo ese documento que pertecede ser acto de posecion.

Resp. 48.—No tiengo presente pero es documento legal.

Preg. 49.—Fue o no fue hecho en el Juzgado del Pueblo de San Jose como dice el mismo documento que se hizo.

Resp. 49.—Debe haber sido en el Juzgado pero no se si fue alli o en casa de Suñol en una de los dos partes se hizo.

Preg. 50.—En aquellos dias tenia Vd como Alcalde algun secretario si tenia quien era.

Resp. 50.—Fernandez era mi secretario pero yo empleó a Gutierrez para escribir.

Preg. 51.—Empleo Vd a Gutierrez para escribir alguno de esos papeles y si lo empleo para cual de ellos.

Resp. 51.—Lo emplio para escribir los todos. Menos los peticiones. El se empleo en Escribir lo que he dicho que son sus formas o saber el acto de possecion y la escritura de compania; lo emplie con consentimiento de los intersados.

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Preg. 52.—El tal Fernandez que fué secretario de Vd. es la misma persona que fue examinado aqui como testigo hace pocos dias?

Resp. 52.—Es la misma persona.

Preg. 53.—La casa de Suñol de la cual ha hablado Vd es la misma casa donde el vive ahora en San Jose.

Resp. 53.—No es la misma, la casa de que yo hablaba la quito y hizo otra nueva el mismo solar.

Preg. 54.—Que ocupacion tenia entonces el tal Gutierrez de quien ha hablado Vd. Y en donde se ocupaba el en sus negocios.

Resp. 54.—Tenia el durante algun tiempo una escuela cerca de la casa de Suñol: se ocupaba en sus negocios en vecindas del pueblo.

Preg. 55.—Tenia el una escuela cerca de la casa de Suñol cuando escribio el acto de posesion.

Resp. 55.—No tengo presente si todavia tenia su escuela el alli, puede, ser que todavia estaba alli.

Preg. 56.—Escribio el, el acto de posesion en el Juzgado, en la casa de Suñol o en la escuela.

Resp. 56.—No tengo presente en que punto escribio.

Preg. 57.—No lo escribio el cuando Vd o las partes interesados con el conocimiento de Vd. la Emplearon para escribirlo?

Resp. 57.—Si.

Preg. 58.—Entonces no tiene Vd. el manor recuerdo tocante al lugar donde lo escribio y si tiene que recuerdo es?

Resp. 58.—No puedo acordarme exactamente si fue en el Juzgado o en casa de Suñol otra parte de mi jurisdiccion; porque el Alcalde tenia jurisdiccion en todo el Pueblo.

Preg. 59.—Lo escribio el en presencia de Vd. o en el mismo dia que Vd lo firmo y poco antes de haberlo Vd firmado.

Resp 59.—No me acuerdo pero mi opinion es que todo se hizo el mismo dia que lo firmamos.

Preg. 60.—Adonde era el lindero del pueblo del cado; hacia la mision de Santa Clara en el año 1845.

Resp. 60.—El Rio de Guadalupe era el lindero de ese lado pero la jurisdiccion de los Alcaldes iba hasta el arroyo de San Francisquito. El Corte Madera.

Preg. 61.—No estaban el juzgado y la casa de Suñol situados ambos en el Pueblo de San José.

Resp.—Si.

Preg. 62.—Como sucede que en el testimonio que dio Vd. en contestacion a las prejuntas de abogado de actor, hablo Vd con alguna duda tocante a la letra del acto de posesion y ahora dice Vd que Vd mismo o las partes interesados con conocimiento de Vd emplearon a Gutierrez para escribir ese papel. Si el fue empleado de ese modo, cemo no podia Vd hablar con certeza tocante a esa letra.

Resp. 61.—Yo he dicho siempre que Gutierrez era el que escribio

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el acto de posesion pero que habia muchos que escribieron el los asuntos tocante a la mina habian varios Castañeda y otros.

Preg. 62.—Todos aquellos que estuvieron escribiendo en los asuntos tocante a la mina estuvieron escribiendo todos al mismo tiempo.

Resp. 62.—No me acuerdo.

Preg. 63.—Acuerde se Vd de los nombres de todos aquellos que estuvieron escribiendo en los asuntos tocante a la mina o que estuvieron presente mientras que se escribia estos papeles como partes interesados o testigos o con otra calidad, lo mejor que puede Vd acordarse ahora.

Resp. 63.—Me acuerdo que Suñol y Noriega estuvieron presente como testigos y yo como Alcalde.—No tengo presente quenes otras estavian alli en ese momento.

Preg. 64.—Esos son todos de las cuales se puede Vd acordar. No estubo su secretario Fernandez presente mientras que se escribia estos papeles o cuando el acto de posesion fue executado por Vd. y firmado Antonio Suñol como testigo.

Resp. 64.—No me acuerdo si estuvo Fernandez alli o no los que he nombrado son todos de los cuales me puede acordar que estuvieron alli en ese momento.

Preg. 66.—Que si los Alcaldes no tenian costumbre de emplear a sus secretarios en escribir papeles oficiales y como testigos de sus actos oficiales. Porque fué que su secretario de Vd no escribio ninguno de los papeles tocante a esta mina y que se llamaron a otras personas para servir de testigos de su acto de posesion.

Resp. 66.—Si tenian esa costumbre pero podian los Alcaldes llamar a otros. Mi secretario no escribio ninguno de esos papeles y otras personas sirvieron de testigos porque yon quize hacerlo asi; asi me convinia.

Preg. 67.—Caando su acto de posesion estuvo todo completo que hizo Vd con el.

Resp. 67.—Gutierrez se quedo con los papeles para arreglarlos y poner los en los archivos el se encargo de todo.

Preg. 68.—Cuantos papeles habian que arreglos se tenio que hacer y siendo este un acto oficial y siendo Vd Alcalde y encargado de sus propios archivos como no se quedo Vd. con los papeles y no los archivo Vd mismo.

Resp. 68.—No tengo presente cuantos papeles habian, se tenia que ponerles la caratula y cueviebos el Secretario es el que esta encargado del juzgado y Gutierrez se quedo con ellos para entregarlos al secretario.

Preg. 69.—Hubo algun otro papel a mas del papel que ha sido presentado aqui por S. O. Houghton. La Exutara de Compania fue uno de los papeles que quedaron con Gutierrez para que el los arreglase y los pusiese en los archivos.

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Resp. 69.—El primeramente mencionado fue uno de ellos; pero no se si el otro fué uno de ellos o no.

Preg. 70.—Sabe Vd lo que son *Rotulones* y si sabe que son.

Resp. 70.—No entiendo esa palabra se entiende de mil modos como nosotros lo entendemos quere decir las letras que se ponen encima de un espediente—letras grandes.

Preg. 71.—Hablando de minas que son Rotulones?

Resp. 71.—Yo entiendo que son avisos pulicos que se ponen en algunos parages publicos avisando a el publico el que tenga algun derecho ó reclamo se debe presentar ante el juez—o si no, estando el tiempo cumplido se dara la posesion.

Preg. 72.—Quien puso los rotulos para esta mina—en que paraje los pusieron y durante cuantos dias.

Res. 72.—Se pusieron en diferentes puntos en el juzgado—creo que por 60 dias, pero no no se lo que dice la ley—no estoy seguro tocante al tiempo ni sobre lo que dice la ley.

Preg. 73.—Que es lo que Vd quiere decir cuando dice en diferentes puntos en el juzgado—Suponga Vd. que este cuarto fue el juzgado—de Vd una explicacion de lo que quiere decir.

Res. 73.—Quiero decir que se pusieron en los lugares mas publicos en la Sala del Juzgado.

Preg. 74.—Vd se informo en aquel tiempo de los requisitos de la ley—puso Vd los Rotulones durante todo los dias que la ley requeria.

Resp. 74.—Yo sabia entonces cuales eran los requisitos de la ley—no me acuerdo bien pero creo, que cumpli con la ley. Yo y Castillero teniamos la ley. La ordenanza de mineria.

Preg. 75.—En la primera representacion de Castillero que Vd esta viendo dice el que el habia descuvierto esta mina. Porque recibio Vd esa Representacion cuando Vd sabia que era falso porque los Chaboyos lo habian ocupardo en el año 1835—y los Indios desde mucho tiempo tenian costumbre de Vd alli a traer pintura para la Iglesia como Vd ha dicho ya en su testimonio.

Resp. 75.—Castillero fué el que dio a luz el metal—el azogue—El presento ante mi el metal como prueba de lo que decia.

Preg. 76.—Le a Vd esa representacion dice algo de azogue—que metal es el que dice que dice que la mina contenia.

Resp. 76.—La representacion habla de oro y Plata pero se sabia que tenia azogue por que yo mismo lo vi.

Preg. 77.—Si se sabia que la mina contenia azogue cuando le fue presentado a Vd aquella primera representacion porque no hablaba la representacion de azogue. Porque no se menciono juntamente con oro y plata—no se consideraba entonces que el azogue era metal precioso.

Resp. 77.—No se porque no se menciono el azogue en esa representacion—Se sabia entonces que el azogue era metal precioso.

Preg. 78.—Si cuando se hizo la primera representacion se sabia que

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la mina contenia, arogue como sucedio, que once dias despues Castillero presento una segunda representacion en la cual declaro que habia descubierto el, el azogue despues de halarse hecho la primera representacion.

Antes de contestar a esta pregunta examine la segunda representacion de Castillero que esta Vd viendo.

Resp. 78.—Yo no tengo presente porque se hizo esto—Es cosa ya muy vieja y no puedo acordarme.

Preg. 79.—Si es cosa tan vieja que Vd no puede acordarse del modo en que fue manejado—no podria ser que estos papeles, nunca fueron presentadas ante Vd y que se equivoca Vd sobre este punto.

Resp. 79.—Yo me acuerdo los documentos por supuesto porque los vi y los dege en manos de Gutierrez. Estuvieron en manos mias como autoridad.

Preg. 80.—Ha dicho Vd que tenia "Las Ordenanzas de Mineria" los tenia Vd en un libro que se llama "Ordenanzas de Mineria."

Resp. 80.—Yo pienso que si.

Preg. 81.—Conoseria Vd el libro si lo volviese Vd a ver.

Resp. 81.—No se conoseria el libro ahora—porque ha pasado mucho tiempo y era cosa que nada me interesaba.

Preg. 82.—Que si jamas ha visto mas que ese unico libro marcado "*Ordenanzas de Mineria*," si Vd ha visto mas de uno no eran todas exactamente iguales.

Resp. 82.—Ese fue el unico que yo he visto.

Preg. 83.—Vea Vd ahora el ultimo instrumento contenido en el Documento producido por S. O. Houghton que esta viendo Vd—y que Vd llama su acto de posesion siendo el mismo que esta firmador por Vd como Alcalde y por Antonio Suñol y José Noriega como testigos de asistencia diga Vd si puede porque se dijo el dia en blanco—esdecir de este modo. "Diciembre de mil ocho cientos cuarenta y cinco.

Resp. 83.—Yo pienso que seria por olvido en la prontitud.

Preg. 84.—Que quiere Vd decir cuando dice "en la prontitud," porque se apuraban?

Resp. 84.—No habia apuracion, pero no habiendo malicia ni fraude ni intenciones malas en aquel tiempe, no nos fijamos en las fechas, no hisimos atencion á eso.

Preg. 85.—No fue este instrumento el papel mas importante tocante a la mina. Que si la fecha tomandola juntamente con la fecha de la representacion una parte muy importante de este instrumento. Puede Vd indicarme algun otro papel importante o no importante tocante á esta mina en lo cual la fecho esta en blanco.

Res. 85.—Yo creo que ese es el mas importante de los papeles tocantes a la mina—la fecha es parte importante de el—no se si hay o

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no papel tocante a la mina en el cual no esta puesta la fecha o en el cual esta la fecha en blanco.

Preg. 86.—Cuando Vd con los dichos Suñol y Noriega firmaron el dicho papel, estaba en la escritura o letra precedente, o estaba en blanco y fue puesto despues la escritura o letra.

Res. 86.—Cuando nosotros firmamos ya estaba hecho todo—el acto estaba todo escrito.

Preg. 87.—Porque firma Vd un acto que pretendia conceder 3000 varas por todos rumbos Encontro Vd alguna autoridad para eso en las Ordenanzas de Mineria.

Res. 87.—Porque me digo Castillero que le convenia 3000 varas y entonces le déje yo que las tomase por todos rumbos. El me digo que tenia ese derecho por ser primer descubridor dél metal. Segun lo que Castillero me digo yo crei que yo como Alcalde tenia autoridad para hacer eso no habiendo otro juez de letra en California, El era hombre instruido en todos esas cosas. El me digo que yo era juez de letras y yo me consideraba como tal—no habiendo otro juez de letras.

Preg. 88.—Que si el Pueblo de San José no estaba en el Partido o Districto segundo? si el Pueblo de San Francisco de asis no era la cabeza del Districto en ese tiempo no era Guerrero Alcalde de primera dominacion—era San Francisco en ese tiempo y como tal no tenia el los poderes de juez de primera instancia, encluyendo a Vd y a los demas Alcaldes de ese partido o Districto; y no era el el unico Alcalde que tenia el derecho de ser llamado Juez de letras.

Res. 88.—San Jose estaba en el segundo districto. No me acuerdo si San Francisco de Asis ó Monterey era la cabeza del Districto. No me acuerdo si Guerrero fue Alcalde entonces. No se si el tendria el derecho de ser llomado Juez de letras.

Preg. 89.—Que laya de posesion es esta de que ha hablado Vd? Quienes fueron con Vd á la Mina? Que agrimensor tenian y que instrumentos? Que medidas hicieron? Que obras hicieron Vds? Cuantas estacas pusieron Vds? En donde y por quien se pusieron? Diga todo lo que ocurio. Cuanto tiempo se quedaron Vds alli. Cuando se volvieron y a donde. Diga tambien que Profesor de Mineria estaba alli presente.

Res. 89.—Suñol, Noriega, el Padre Real, Castillero, Gutierrez y Fernandez tambien me parece otras personas, fueron pero no fueron con migo a la mina. No me acuerdo quienes.

Estos mismos llegaron al agujero de la mina. Estuvimos alli algun tiempo y mande llamar al sarjento José Reyes Berreyesa a su Rancho. Estos estuvieron alli y otros estuvieron tambien pero no me acuerdo quienes. No hubo agrimensor. Castillero tenia una aguja pequena de estos que se llevan en la balsa. Yo le dige a Castillero que no se podia medir con cordel porque estaba muy quebrada la tierra y que se tomara el las 3000 varas por la parte en la sierra por rumbos.

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Todo que se hablo alli se escribio en un borrador todo lo que yo le decia a Castillero—esto fue la unica obra que hiziemos. No me acuerdo haber puesto estacas. No me acuerdo si se pusieron o no. Quedamos bastante tiempo en la mina no se cuantas horas estuvimos examinando todo. Nos volvimos a San José a donde llegamos muy tarde. El unico Profesor de Mineria que estuvo alli fue Castillero porque el lo entendia.

Preg. 90.—El terreno de que dice Vd que dio posesion de este modo estaba en su forma cuadrada o redondo?

Res. 90.—No se si estaba redondo o cuadrado—porque hize la division por rumbos. Como le propusa a Castillero es decir que lo tomase por donde estuviese valdio o en la sierra porque los Rancheros no querian sierra, querian puro plano.

Preg. 91.—Por quien mando Vd llamar a Berreyesa. De la mina envois Vd. Se envio decir verbalmente o por escrito cuanto tiempo lo aguardo Vd? Como vino el? De donde vino el? Cuanto tiempo se quedo el en la mina.

Res. 91.—Por un hijo de Berreyesa lo mande llamar. De la mina envie. Lo mande llamar verbalmente porque le habia dicho yo antes que iba a la mina en ese tiempo. El vino luego o aguardo poco tiempo. Vino a Caballo de su Rancho. Se quedo hasta que nosotros nos vinimos.

Preg. 92.—El Sarjento Berreyesa y ese hijo de el estan vivos? En donde estaba el Genl. José Castro en el mes de Noviembre del año 1845 y quien fué su Secretario de el si tenia uno.

Res. 92.—El Sarjento Berreyesa esta muerto pero no se si ese hijo esta vivo o muerto porque no me acuerdo cual de los hijos era pero se que fue uno de ellos. No se donde estaba el Genl. Castro en ese mes. Castañeda fue Secretario de el pero no se si lo fue en ese mes puede ser que halla sido.

Aque se empezo de nuevo el examen por parte del actor.

Filed Dec. 29th, 1857.

J. EDGAR GRYMES,
Deputy.

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DEPOSITION OF SALVIO PACHECO.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, Nov. 19, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Salvio Pacheco a witness produced on behalf of the Claimant in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Edwin C. Palmer—a sworn interpreter.

PRESENT.—The United States Attorney by E. Randolph; A. C. Peachy for Claimant.

QUESTIONS BY ATTORNEY FOR CLAIMANT.

Question 1.—Your name, age, and place of residence?

Answer 1.—Salvio Pacheco; 65; I reside in Martinez, in Contra Costa County.

Ques. 2.—Look at the Document now shown you marked "A B" attached to the deposition of Jose Fernandez and say if you know in whose hand-writing are the various instruments therein contained, and state whether you are acquainted with the signature of Pedro Chaboya and whether the name of Pedro Chaboya where the same occurs in said document is the genuine signature of the said Chaboya.

Ans. 2.—This writing was made in the Pueblo of San Jose in the year 1846. The whole of the body of this document is in my hand-writing; I am acquainted with the signature of Pedro Chaboya; the signature of Chaboya wherever it occurs in this document is his genuine signature.

Ques. 3.—Look at the date of the certificate signed by Pedro Chaboya on the last page of the Document, and state what office you held at that time, and also what office if any was held by Chaboya at the date of said instrument.

Ans. 3.—I was Secrétary of the County at that time; at that time, Pedro Chaboya was Alcalde of either second nomination, or third, I am not certain which.

Ques. 4.—Look at the document produced by S. O. Houghton, on his examination taken in this cause on the 23d day of October

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1857, and examine the marginal decree on the first page, and state if you know in whose hand-writing is the body of said decree, and whose signature is affixed to the said decree.

Ans. 4.—The hand-writing of the body of the marginal decree is my own hand-writing, and the signature is that of Dolores Pacheco, First Alcalde; at that time there were three Alcaldes; Dolores Pacheco was the first, and Pedro Chaboya and Valentin Higuera were the other two; I do not remember which was the second Alcalde of those two, but the first was Dolores Pacheco.

Ques. 5.—Was Dolores Pacheco a relative of yours; if so, how related?

Ans. 5.—He was; he was my brother, he is dead: he died at the Pueblo of San José, about two years ago more or less.

Ques. 6.—At the time referred to in the 3d question, you answered that you were Secretary of the County. Please explain what you mean by that?

Ans. 6.—At the time of the date of the certificate, I was "Escribiente" or Secretary of the Judge, or of the Justice of the Court of the County; I was nominated by the Judge of the County, who was Dolores Pacheco, and the appointment was confirmed by the Government.

CROSS EXAMINATION.

Examination adjourned until to-morrow at 11 o'clock A. M., Nov. 20, 1857.

SAN FRANCISCO, Nov. 20, 1857.

Deposition of Salvio Pacheco this day resumed.

PRESENT.—United States Attorney by E. Randolph; A. C. Peachy for Claimant.

Ques. 1.—When did Dolores Pacheco cease to be Alcalde, and who succeeded him?

Ans. 1.—His successors were the Yankees when they took the place in the year 1846; Valentin Higuera and myself delivered the Archives of San Jose to the troops that came there; I do not speak of the Commodore, but of the people who rose to take the country; 15 armed men came to the house.

Ques. 2.—Who were the people who rose to take the country? Were they the same who raised the Bear flag, in Sacramento Valley; who captured Genl. Vallejo at Sonoma, and who killed Sergeant José Reyes Berreyesa, and the two young Haros near San Rafael?

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(Objected to.)

Ans. 2.—I do not know whether they were the same who raised the Bear flag, or those who came with the Commodore or others; what is certain is, that even the naturalized foreigners nearly all of them took up arms to assist the Americans.

Ques. 3.—What office was it you say you held?

(Objected to.)

Ans. 3.—Secretary of the county; clerk; in the year 1846.

Ques. 4.—How many counties were there in California?

(Objected to.)

Ans. 4.—In each town there were Alcaldes and Judges, now they are called a county; I suppose that County and Jusgado, or Court are the same thing.

Ques. 5.—What was the duties of the first Alcalde?

(Question objected to as asking the witness' legal opinion.)

Ans. 5.—To give to everybody what belonged to him; to do justice to those who were entitled to it according to the laws by which he was governed.

Ques. 6.—What were the duties of the second Alcalde and of the third Alcalde?

(Question objected for the same reason as to the foregoing question.)

Ans. 6.—The same; in the absence of the first and second the third acted.

Ques. 7.—Was not Valentin Higuerco second Alcalde, or first Supplente?

Ans. 7.—I do not remember whether he was first or second Alcalde, but I think he was third Alcalde, because the Documents shown me yesterday appear to be signed by Pedro Chaboya as second Alcalde, this must have been on account of the sickness or absence of the ffrst.

Ques: 8.—Did you see in the paper shown you yesterday that Pedro Chaboya was second Alcalde?

(Question objected to on the ground that it is asking the witness' remembrance as to the contents of a written document about which the witness was examiued in chief only as regards the handwriting and the signatures.)

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Ans. 8:—The paper does not say that he was second Alcalde, but according to my view he acted as such.

Ques. 9:—After the 15 armed Yankees took the office, and the papers, what became of you? Where did you go to and what did you do?

Ans. 9.—I came to my Rancho of the "Monte del Diablo," to attend to my private affairs.

Ques. 10.—Have you lived at your Rancho, and been attending to your private affairs ever since?

Ans. 10.—I have.

Ques. 11.—When the Yankees took the Plaza, the office, and the papers, where was Genl. Jose Castro?

Ans. 11.—He had retired towards the Pueblo of Los Angeles, I learned that he went to Sonora in Mexico.

Ques. 12.—How long after Genl. Castro retired, was it, that the Yankees entered?

Ans. 12.—I do not remember how many days after.

Ques. 13.—How long after the Yankee Commodores took Monterey and San Francisco, was it, before you gave up the papers at San Jose, to the 15 armed men?

Ans. 13.—When I delivered the papers at San Jose, the Commodore was here, and he afterwards left to raise the flag at Monterey.

Ques. 14.—Who asked you to make that copy which was shown you yesterday?

Ans. 14.—The Alcalde Pedro Chaboya.

Ques. 15.—When did he ask you?

(Question objected to.)

Ans. 15.—The year that he was in office, which was 1846.

Ques. 16.—How long before the Yankees came was it that it was made?

Ans. 16.—I do not remember how long, nor how many months before the Yankees arrivedafterwards; by the arrival of the Yankees, I mean the time when they took the archieves of the government from us.

Ques. 17.—Was it on the 27th or the 29th, that you entered the marginal decree on the petition of Genl. Castro; in the copy of which you have testified, the seven seems to have been changed into a nine; was that change made by yourself?

(Question objected to, because it asks the witness to state from his memory the date of an official act, which act is in writing, which writing is in the hands of the Att'y for the U. S. the signatures of the same having been duly proved.)

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(The documents then referred to were then handed to the witness by the United States Att'y, and after having examined them he answered as follows.)

Ans. 17.—Twenty-nine is written in both, this is clear, there is no change. I have not said that it appeared to have been changed.

(The question as propounded to the witness in Spanish, contained a statement that the witness had testified that there appeared to be a change in the copy, "A. B.")

Ques. 18.—Was Genl. José Castro, in San José on the 27th, 28th, or 29th of June, 1846?

Ans. 18.—I do not remember; he retired in June or July. He was in Santa Clara at that time, June or July; while he was there they were up this way, and when he retired, the Yankees entered and took the archives from us.

Ques. 19.—Who handed Genl, Castro's petition to you for you to write the marginal order on it; was it Gen. Castro himself?

(Question objected to as leading, and asking about new matter.)

Ans. 19.—Dolores Pacheco, the Alcalde, gave it to me.

Ques. 20.—Did Gen. Castro himself bring it to the Alcalde: was he at the Jusgado, or in San José, on that day?

Ans. 20.—I do not know.

Ques. 21—Was this marginal decree entered on the Alcalde's books, or not? When Dolores Pacheco made concessions of lots in June, 1846, did he not have his orders entered on the book?

(Question objected to, especially the latter part of it, as being entirely irrelevant.)

Ans. 21.—That decree was placed, or copied in the book. When Dolores Pacheco made those concessions, they were written in a book.

Ques. 22.—Will you take the pen and write the following words as they are read to you, and sign your name with your rubric?

Ans. 22—The witness writes,

(Before the witness writes, the attorney for the claimant objects to this proceeding.)

"Pueblo de S. Jose G. Junio 29, de 1846.
Como lo pide inclullase este y Archibase.
SALVIO PACHECO."

(The witness states if there is any difference in this handwriting

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and the handwriting of the decree, it is because he has not written for 8 or 10 years.)

Ques. 23.—Now please write the words " June 27," and tell me if that is the way you always sign your name, or make you rubric ?

(Att'y for claimant objects to the whole proceeding, in making the witness write in this deposition.)

" Junio, 27."

Ans. 23.—At first I signed differently, but afterwards I have always signed and made my rubric in this manner.

Ques. 24.—Do you know how to make the rubric of Dolores Pacheco ?

Ans. 24.—No.

Ques. 25.—Do you not know that there exists among the archives in San Jose, a declaration of your brother Dolores Pacheco, made before James W. Weeks, Alcalde, to the effect, that on the 17th or 18th day of June, 1846, or thereabouts, he, the said Dolores Pacheco, turned over the Alcaldeship to Valentin Higuera, and never afterwards occupied himself in it, or performed any official act ?

(Question objected to on the ground that it asks the witness what are the contents of a written instrument, whose existence the question seems to acknowledge, as well as the place where it may be found.)

Ans. 25.—When Castro departed for the South with the people, Pedro Chaboya, and Valentin Higuera were left by him in charge of the administration of justice, he left them as 2d and 3d Alcaldes, Dolores Pacheco being first; a few days after the withdrawal of Castro, Chaboya fell sick, and Valentin Higuera became Alcalde in his stead. The Americans arrived soon after, and he and I delivered the house and archives to the American Government.

Deposition taken subject to all exceptions, except as to the form of the questions.

SALVIO PACHECO.

Subscribed and sworn to before me this 20 Novr. 1857.

CUTLER McALLISTER.
U. S. Com.

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Cross-Examination of Salvio Pacheco.

Preg. 1.—Cuando Salio Dolores Pacheco del empleo de Alcalde y quien fue su successor.

Resp. 1.—Sus successores fueron los *Yankees* cuando tomaron la plaza en el año 1846. Yo y Valentin Higuera entregamos los archivos de San José a la tropa que vinieron alli. No hablo del commodore sino de la gente que se levantaron para tomar el pais, vieron a la casa quenice hombres armados.

Preg. 2.—Quienes fueron los que se levantaron para tomar el pais. Fueron los mismos que levantaron la bandera del oso en Valle del Sacramento; que tomaron preso al General Vallejo en Sonoma y que mataron a Jose Reyes Berreyesa y los dos jovenes Haros cerca de San Rafael.

Res. 2.—No se si fueron los que levantaron la bandera del oso o los que vinieron con el Comodore, otros. Lo cierto es que hasta los estrangeros naturalizados casi todos tomaran las armas para ayudar a los Americanos.

Preg. 3.—Que empleos dijo Vd que habia tenido.

Res. 3.—Secretario del Condado, escribiente, en el año '46.

Preg. 4.—Cuantos Condados habian en California?

Res. 4.—En cada poblacion habian Alcalde y jueces; ahora los llaman Condado yo pienzo que Condado es lo mismo que Juzgado.

Preg. 5.—Cuales eran los deberes del Alcalde primero.

Res. 5.—Dar a cada uno lo que era suyo y hacer justicia a el que la tenia; segun las leyes que le regian.

Preg. 6.—Cuales eran los deberes del Alcalde segundo y del Alcalde tercero.

Res. 6.—Los mismos. En ansencia del primero obraba el segundo. En ansencia del primero y segundo obraba el tercero.

Preg. 7.—No era Valentin Higuera Alcalde segundo o suplente primero?

Resp. 7.—No me acuerdo si era Alcalde primero o segundo pero, me parece que era el tercero porque en los documentos que me enseñaron ayer; se ve firmado Pedro Chaboya como Alcalde segundo y eso seria por enfermedad ó ansencia del primero.

Preg. 8.—Vio Vd en el papel que le enseñaron a Vd ayer que Pedro Chaboya era Alcalde segundo.

Res. 8.—El papel no dice que el era Alcalde segundo, pero a mi concepto el obio como tal.

Preg. 9.—Despues que los quince Yankees armados tomaron la oficina y los papeles que le sucedio a Vd; a donde se fue y que hizo Vd.

Res. 9.—Me vine a mi Rancho del *Monte del Diablo* a ocuparme de mis negocios particulares.

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Preg. 10.—Desde ese tiempo se ha quedado Vd viviendo siempre en su Rancho y ocupado en sus negocios particulares ?

Res. 10.—Si.

Preg. 11.—Cuando los " *Yankees* " tomaron la plaza la oficina y los papeles en donde se hallaba el Genl. José Castro.

Res. 11.—Estaba el retirado en direccion del Pueblo de Los Angeles. Supe que despues se retiro el para Sonoma en Mexico.

Preg. 12.—Cuanto tiempo despues de la retirada del Genl. Castro entraron los Yankees.

Res. 12.—No me acuerdo ; cuantos dias despues.

Preg. 13.—Cuanto tiempo despues que los Comodores Yankees tomaron Monterey y San Francisco, fue cuando Vd entrego los papeles en San José a los quince hombres armados.

Res. 13.—Cuando yo entregue los papeles en San José el Comodore estaba aqui y despues se fue a levantar la Bandera en Monterey.

Preg. 14.—Quien le dijo a Vd que hiciese esa copia que le enseñaron ayer.

Res. 14.—El Alcalde Pedro Chaboya.

Preg. 15.—Cuando le digo que lo hiciese.

Res. 15.—El año de su empleo que fue en '46.

Preg. 16.—Cuanto tiempo antes de la llegada de los Yankees se hizo eso.

Res. 16.—No tengo presente cuanto tiempo cuantos meses antes ; despues llegaron los Yankees. Entiendo yo por llegada de los Yankees, cuando nos quitaron los archivos, el gobierno.

Preg. 17.—Fue en el dia 29 or en el dia 27 que Vd escribio el decreto en el margen sobre la peticion del Genl. Castro en la copia del cual ha dicho Vd en su testimonio, que el 7 parece haber sido cambiado a un 9 ; ese cambio fue hecho por Vd mismo.

Resp. 17.—29 esta escrito en los dos. Esto esta claro no hay cambia ninguno.

Yo no he dicho que parecia haberse cambiado.

Preg. 18.—Estuvo el Genl. José Castro en San José el dia 27, 28, ó 29 de Junio del año 1846.

Res. 18.—No me acuerdo, en Junio o Julio se retiró el. Estuvo en Santa Clara en ese tiempo Junio o Julio. Mientras que el estava alli ellos estuvieron por acá y cuando el se retivo entraron los Yankees y nos quitaron los archivos.

Preg. 19.—Quien le entrego a Vd la peticion del Genl. Castro para que Vd escribiese en el decreto en la margen. Fue el mismo Genl. ?

Res. 19.—Dolores Pacheco, el Alcalde me lo entrego.

Preg. 20.—El mismo Genl. Castro trajo al Alcalde. Estuvo el Castro en el juzgado o en San Jose en ese dia.

Res. 20.—No se.

Preg. 21.—Este decreto en el margen fue escrito o registrado en el

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libro del Alcalde? Cuando Dolores Pacheco hizo consesiones de solares en San José en el mes de Junio año 1846 no hacia poner sus ordenes en el libro?

Res. 21.—Ese decreto fue puesto o copiado en el libro: cuando Dolores Pacheco hacia esas concesiones se escribian en un libro.

Preg. 22.—Tome Vd la pluma y escriba las palabras seguentes ordean,

"*Pueblo de S. José, C.*

Junio 29 *de* 1846.

Como lo pide inclullarse este y archibarse."

firme Vd con su rubrica.

Preg. 23.—Escriba Vd ahora las palabras "Junio 27" y digame si asi es como siempre firma y hace su rubrica Vd.

Res. 23.—Al principio firmaba de otra manera pero siempre despues he firmado y hecho mi rubrica de este modo.

Preg. 24.—Sabe Vd hacer la rubrica de Dolores Pacheco.

Res. 24.—No.

Preg. 25.—No sabe Vd que existe entre los archivos en San José, una declaracion de su hermano Dolores Pacheco, hecha delante de Santiago W. Weekes Alcalde que dice que en el dia 17 o 18 de Junio del año 1846 o por alli en esos dias el dicho Dolores Pacheco entrego la alcaldia a Valentin Higuera y que nunca despues hizo ningo acto oficial ni se ocupó mas de dicho empleo.

Res. 25.—Cuando se fue Castro para abajo con la gente dejó a Pedro Chaboya y a Valentin Higuera encargados de la Justicia; los dejo de alcaldes segundo y tercero siendo Dolores Pacheco alcalde primero. Pocos dias despues de la retirada de Castro se enfermo Chaboya y Valentin Higuera quedo de Alcalde en su lugar, y luego llegaron los Americanos y yo y el entregamos la casa y archivos al Gobierno Americano.

Filed Dec'r 29th, 1857.

JOHN A. MONROE,
Clerk.
BY J. EDGAR GRYMES,
Deputy.

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DEPOSITION OF T. F. GRANT.

UNITED STATES DISTICT COURT,
Northern District of California.

SAN FRANCISCO, Nov. 20, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came T. F. Grant, a witness produced on behalf of the United States in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT: The U. S. Attorney, by E. Randolph; A. C. Peachy, for Claimant.

QUESTIONS BY U. S. ATTORNEY.

Question 1.—Your name, age, occupation, and place of residence?

Answer 1.—T. F. Grant; 30 years; Deputy County Recorder of Santa Clara County; I reside in San José.

Ques. 2.—Take this exhibit "C D," attached to the deposition of José Fernandez, being the "Escritura de Compania," look at it and say what manufactures' marks, or water-marks you find on it.

(Question objected to on the ground that the witness has not shown that he has any knowledge of water or other marks, put by manufacturers on paper, nor has he said that he has any knowledge or skill in describing, tracing, or knowing such marks.)

Ans. 2.—I find "G. J. O. R°. M. A. G. N. A. N. J. E." I can't make out what the rest of that is, it looks more like an "F" than any other letter; this is on the first leaf, second page of said document; over the letter "F" there is a small "o"; under it an "N," at the end a little round dot, a period I suppose; over the period there is a sort of a dash.

Ques. 3.—Look on the second leaf of said document and tell what you find there.

Ans. 3.—I find an "R" with a letter "S" on the top of it.

Ques. 4.—Now take the document produced by S. O. Houghton, look at the first instrument therein, being the petition signed José Cas-

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tro, with the marginal decree signed Pacheco, and say what water-marks or manufacturers' mark you find on it.

Ans. 5.—I find a "P" or an "R."; I don't know which it is, with an "S" over it; this is on the first leaf of said instrument. On the second leaf of said instrument I find "G. J. O. R°. M. A. G. N. A. N. J. E. E°." and a period at the end.

Ques. 6.—Take now the second instrument in said document, being the first petition signed Andres Castillero, and say what water or manufactur's marks you find on said instrument.

Ans. 6.—I find something similar to a coat-of-arms with a pair of scales on it, this is on the first leaf of said instrument; on the second leaf I find something, I do not know what to call it; I do not know what it is meant for; I should not call it a flower; I never saw a flower like it; in the corner of the same leaf I find something like a pair of scales.

Ques. 7.—Take now the next instrument in said document, being the second petition of Castillero, and say what water, or manufacturer's mark you find on said instrument.

Ans. 7.—On the first leaf of said instrument I find a "P^s"; also in the corner of the same leaf I find an "O"; on the second leaf I find "G. J. O. R°. M. A. G. N. A. N. J. E. F°." a period after it, and one on the same line, not exactly under it.

Ques. 8.—Look now at the next and last instrument in said document, being the act of possession signed by Pico, and witnessed by Suñol and Noriega, and say what water or manufacture's mark you find there.

Ans. 8.—On the first leaf I find "P^s" and a period, also an "O" in the corner of the same leaf; an the second leaf I find "G. J. O. R°. M. A. G. N. A. N. J. E. F°., a period at the end, and another period underneath.

CROSS-EXAMINATION.

Ques. 1.—Look at the sheet within which are found the documents concerning which you have been testifying, and state what water-marks you find on the same.

Ans. 1.—On the first page I find what I should call a coat-of-arms; also the letters

"G. B.
F.
E. M. V. E D. O. V. A."

On the last leaf of said sheet I find "F. A. B." There is a hole in the paper, and then comes what I should call "A. J." with "12" underneath.

Ques. 2.—Look at the document marked "A. B." purporting to

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be a copy of the Houghton document, concerning which you have been examined, and say what water-mark or manufacturer's marks you find on said paper.

Ans. 2.—On the first leaf I find a coat-of-arms with the letters

"G. B.
F.
E. M. V. E. D. O. V. A."

which appears to me similar to the one described in the last answer; on the other leaf of the same sheet, I find

"F. A. B. J. A. N. J."
"12."

I find the second sheet of said document to have the same marks as the other.

Ques. 3.—Look upon the Exhibit "T. R." attached to the deposition of José Fernandez, and answer the same question with reference to that, and state whether the water-mark thereon resembles any of those you have before described.

Ans. 3.—I find upon the said Exhibit, being a half leaf of paper, the upper portion of a coat-of-arms, such as I have already described, as being on the first leaf of each sheet of the Chaboya copy, being Exhibit "A. B." attached to the deposition of José Fernandez.

Ques. 4.—Answer the same question in reference to "Exhibit X. Y." attached to the deposition of José Fernandez.

Ans. 4.—On the first leaf of this sheet I find the same marks as on the first leaf of each sheet of the Chaboya copy, "Exhibit A. B." above referred to. On the second leaf of this Exhibit I find the same letters and figures as those on each leaf of the second sheets of the Chaboya copy, "Exhibit A. B." above referred to.

Above deposition taken subject to all exceptions, except as to the form of the questions.

T. F. GRANT.

Subscribed and sworn to before me, this 20th Nov., 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Filed December 29th, 1857.

J. EDGAR GRYMES, Deputy.

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DEPOSITION OF BENITO DIAZ.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, Nov. 25, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern Distrtct of California, duly authorized to administer oaths, &c., &c., came Benito Diaz, a witness produced on behalf of the United States, in case No. 420, being an appeal from the Board of Commissions to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter:

PRESENT: U. S. Attorney by E. Randolph; A. C. Peachy, for Claimant.

QUESTIONS BY U. S. ATTORNEY.

Question 1.—Your name, age, residence, what offices have you held in California, if any, and when?

Answer 1.—Beneto Diaz; 43; I reside in Monterey; I was employed in the Custom House, and a lieutenant in the State Militia.

Ques. 2.—Please look at the document now shown you, being the document produced by S. O. Houghton, and look at the first instrument in that document, being the petition signed José Castro, and state if you know the handwriting of the body of that instrument, and if yea, whose handwriting it is.

Ans. 2.—The body of that instrument is in my handwriting.

Ques. 3.—At what time was it written, if you remember? If you do remember, state what circumstances you can now recall which enables you to fix precisely the date.

(Question objected to on the ground that it is asking the witness the contents of a written instrument.)

Ans. 3.—I do not remember the date.

Ques. 4.—In what year was it written, or about what year?

Ans. 4.—I remember having written it, but I do not know in what year.

Ques. 5.—Endeavor to recall the circumstances under which it was

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written; on what occasion; at what place; by whose request; who was with you, &c.

Ans. 5.—I remember that I wrote it at Santa Clara, at the request of Father Real, he told me to make him the copy of a paper, which he had in his hand; I think this is what I wrote; there were two persons there; one was Juan Castañeda, and the other was the porter of the Mission.

Ques. 6.—Was the Mission your residence; if not, what were you doing there at that time, and what was Castañeda doing there?

Ans. 6.—We came, myself and Castañeda, to attend to some business with Father Real; we came to solicit possession of the orchard of Santa Clara.

Ques. 7.—Where did you come from when you came to solicit possession of the orchard from Father Real? Where had you been?

Ans. 7.—We came from Monterey, we had been there.

Ques. 8.—And to Monterey, where did you come from; where had you been?

Ans. 8.—We had been at Monterey; we had not come from any place.

Ques. 9.—How long had you been staying at Monterey, before you started to go to Santa Clara to demand possession of that orchard?

Ans. 9.—I lived in Monterey, and at that time Castañeda was settled there.

Ques. 10.—Do you remember any thing about Gen. Castro's retiring from this upper part of the country, to the south, when the Americans invaded the country?

Ans. 10.—I do remember.

Ques. 11.—Do you remember any of the persons who retired with him, and if yea, mention the names of such as you may remember.

Ans. 11.—I remember Mr. Alvarado, Antonio Maria Pico, and Juan Pinto, and the greater part of the people.

Ques. 11.—What about you and Castañeda, did you go too, or did you remain behind?

Ans. 12.—When they took Monterey I was there, and three or four days afterwards I joined the division under Castro, and which was on the plain of Monterey, and I found Castañeda there. He was also going with the division under Castro.

Ques. 13.—After joining Gen. Castro on the plain of Monterey, where did you go next?

Ans. 13.—To Los Angeles.

Ques. 14.—How long did you remain in the southern part of California, before you came back to Monterey?

Ans. 14.—A month more or less.

Ques. 15.—Was it before the Americans took Los Angeles the first time, or after that event, that you returned to Monterey?

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Ans. 15.—I left the night before they took it the first time.

Ques. 16.—Who came with you?

Ans. 16.—There were several came, I remember Fernandez, Chaboya, Antonio Maria Pico, and many others.

Ques. 17.—Was Juan Castañeda one?

(Question objected to as leading.)

Ans. 17.—No.

Ques. 18.—About how long afterwards was it before you saw Juan Castañeda in Monterey?

Ans. 18.—Three or four months after.

Ques. 19.—Was it before you saw Juan Castañeda in Monterey, on that occasion, that you and he went to Santa Clara to solicit possession of the orchard from Father Real? I mean was it before or after Castañeda returned from the South?

Ans. 19.—It was after Castañeda's return from the South.

Ques. 20.—About how long after, as well as you can now remember?

Ans. 20.—It was five or six months after.

Ques. 21.—Was it on that visit of yourself and Castañeda, that you wrote the paper of which you have testified, or was it on any other occasion?

(Question objected to as leading.)

Ans. 21.—It was at that time.

(The objection to the above question was made after witness had given his answer to the interpreter.)

Ques. 22.—Do you remember any incident which occurred at that time, fixing in your mind the fact of your writing that paper?

Ans. 22.—I only remember that Father Real dictated to me from a paper, and that Castañeda was there also.

Ques. 23.—Look at the paper again, look at the signature to the paper; look at the marginal order thereon, and say whether the said signature, and the said marginal order were upon the paper at the time you wrote it; or whether they were afterwards put on in your presence, or whether you know anything about them.

Ans. 23.—I know nothing about them; there was no decree, upon it when I wrote it, immediately after I finished writing it, Father Real took it and put away.

Ques. 24.—Look at the three other instruments in the document referred to contained, viz. in the S. O. Houghton document, and say

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if you know anything about the hand writing of them, and if so what? And say if you know anything about the writing of them, or any one of them, and if yea, what?

Ans. 24.—The first petition of Castillero, I know to be in the hand writing of Castañeda. I no not know the hand writing of the other two instruments. I know nothing about the writing or preparation of any of them.

Ques. 25.—Did Father Real give possession of the orchard to you and to Castañeda?

Ans. 25.—No.

Ques. 26.—Who is the present holder of your claim to that orchard, under which you sought to get possession?

Ans. 26.—Charley Clayton is the present holder of that claim.

Ques. 27.—When, a few days after the taking of Monterey by the Americans, you joined Gen. Castro in the plain of Monterey, as you have testified, was that the first time you had joined him during that campaign against the Americans?

Ans. 27.—That was not the first time.

Ques. 28.—When and where had you been with him before during that campaign; when, and at what place had you left him?

Ans. 28.—I had been with him before at Santa Clara, and at Contra Costa; I left him at Santa Clara, three or four days after we returned from Contra Costa, and I went to Monterey.

Ques. 29.—Do you know on what days you were in Contra Costa with Gen. Castro; at what day you got back to Santa Clara?

Ans. 29.—I can't remember.

Ques. 30.—How many days was it before the Americans took Monterey, that you met Gen. Castro at Santa Clara?

Ans. 30—I remember that I left Santa Clara on the 4th July, and the Americans took Santa Clara on the 7th July.

Ques. 31.—Did you, or did you not, when you were in Contra Costa, or when you were in Santa Clara, at the time referred to last, write any paper relating to this mine, at the request of Gen. Castro, or of Father Real, or of any body else, or at your own suggestion?

Ans. 31.—No, none.

Ques. 32.—Is not Castañeda now dead?

Ans.—Yes, he is dead.

Examination adjourned until to-morrow, at 11, A. M., Nov. 26, 1857.

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San Francisco, Nov. 26, 1857.

Deposition of Benito Diaz, a witness produced on behalf of the United States, this day continued.

Present: U. S. Attorney, by E. Randolph, Esq.; A. C. Peachy for Claimant.

Cross-Examination.

Ques. 1. After you copied the document shown you by Padre Real, when did you next see the copy you made?

Ans. 1. I saw it here in this room, about fifteen days ago.

Ques. 1. Who was with you when you saw it; did you come here to look at it; if yea, who brought you here?

Ans. 2. Messrs. Cambuston and Laurencel, were with me when I saw it. I came to see it because Mr. Laurencel told me to come here to see whether I knew the handwriting of some papers that were here.

Ques. 3. Were no other persons with you at that time, or on that occasion?

Ans. 3. There were several other persons there looking at the document, and amongst them this gentleman.

(Witness pointed to Mr. Thompson, the Recorder of Santa Clara County.)

Ques. 4. When did you next see the document?

Ans. 4.—Some five or six days ago I saw it here in the other room.

Ques. 5.—At whose instance did you come to examine it the second time, and who was present at the second examination?

Ans. 5.—I came at the request of Mr. Laurencel the second time; Mr. Laurencel and these other gentlemen were present.

Ques. 6.—When did you next inspect that document, and at whose instance?

Ans. 6.—I did not see it again until yesterday, when I saw it here.

Ques. 7.—Have you any permanent place of residence, and what do you do for a living?

Ans. 7.—I have a permanent place of residence, and I make a living by working.

Ques. 8.—Where do you reside, and what kind of a work do you do for a living?

Ans. 8.—I live at Monterey; my house is there; I have a part of

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a ranch, and there I have another house, and on the same rancho I am cultivating an orchard.

Ques. 9.—What is the name of that rancho, and who owns the other parts of it?

Ans. 9.—It is called "El Piogo"; my wife's brothers own the other parts of it.

Ques. 10.—How long have you been in San Francisco this time?

Ans. 10.—About three weeks.

Ques. 11.—What have been your business here?

Ans. 11.—I came to attend to some business with Mr. Alvarado.

Ques. 12.—Who first told you that there was a document used in this case in your handwriting?

Ans. 12.—Nobody told me; I did not know there was until I saw it.

Ques. 13.—What was said to you by Mr. Laurencel about this document when he requested you to come and inspect it? state everything that was said by him you on that occasion.

Ans. 13.—He came and told me to do him the favor to come and see whether I knew the handwriting, and we came, Cambuston and I; I recognized that of Castañeda and my own, but I said that I only recognized that of Castañeda; three or four days afterwards I went to San José, and returned here again, and Mr. Laurencel sent for me again; I think it was Friday, and he asked me if it was true that that was my handwriting; and he asked me several other questions, and he said it was all right, and that he was much obliged to me, and on Saturday the Marshal took me a subpœna.

Ques. 14.—Did Mr. Laurencel speak to you in Spanish, or did he converse with you by means of an interpreter?

Ans. 14.—He spoke to me in Spanish.

Ques. 15.—What were the other questions Mr. Laurencel asked you on that occasion?

Ans. 15.—He asked me when I had written that document, where and in whose presence, and several others, which I don't remember, nearly the same that was asked yesterday.

Ques. 16.—After your first inspection of this document, and before your conversation with Mr. Laurencel, mentioned in your last answer, had you ever conversed with any person about that document? if yea, name all the persons with whom you have held such conversation, and state what you said to them, and what they said to you, about it.

Ans. 16.—I had a conversation with Fernandez, with Antonio Maria Pico, with a person named James Crane; Fernandez knew my handwriting, and he asked me if I had really written it, and I replied to him, yes, that I had written it. Antonio Maria Pico and James Crane were present when Fernandez put me these questions. Afterwards Don Antonio Maria Pico told me that he would cause my testimony to

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be taken, and I replied to him that he should do me the favor not to involve me in the matter, because I intended to leave soon.

Ques. 17.—On how many occasions did you ask Padre Real for the possession of the orchard of Santa Clara?

Ans. 17.—On two occasions.

Ques. 18.—The date of the first?

Ans. 18.—I do not remember the date, but it was before we went in person to ask it, it was through the medium of Don Antonio Osio.

Ques. 19.—State the dates as well as you can remember; on your direct examination you appear to have a very good memory for dates, please exercise it now a little.

Ans. 19.—If I remember I will tell it, but after ten or twelve years it is difficult to remember the date; I remember that I sent Osio the first time, but I don't remember the date. I don't remember the date of the second time, but I now remember that the date can be ascertained from the newspapers, because they gave an account of a difficulty I had with Father Real touching the possession of the orchard.

Ques. 20.—What newspapers?

Ans. 20.—The first newspaper that was established here, I think; I think the editor was that very tall man they used to call Simple or Semple.

Ques. 21.—Was your first application to Padre Real for the possession of this orchard before, or after, you went south with General Castro?

Ans. 21.—It was after we came from the south, because when we came from the south, we brought the titles to the orchard of Santa Clara.

Ques. 22.—Have you now any interest in the orchard of Santa Clara, under the title of which you have first spoken, or under any other?

(Question objected to as irrelevant, even on a cross-examination.)

Ans. 22.—I have no interest.

Ques. 23.—Did you sell your interest in said orchard derived from the title of which you have spoken; if yea, to whom, for what price, and when?

(Question objected to as before.)

Ans 23.—I sold it to Charley Clayton in the year 1849 or 1850, but I don't remember for how much.

Ques. 24.—Try to remember for how much.

Ans. 24.—From $1,200 to $1,600.

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Ques. 25.—Where was that title written out and signed, and when? I mean your title to the orchard of Santa Clara.

(Question objected to, because it is irrelevant, inasmuch as it is the Claimant's title to the Almaden mine, which is now on trial, and not the witness' title to the orchard.)

Ans. 25.—It was written by Juan Castañeda, and signed by Pio Pico; it was written and signed at Los Angeles; I don't know when.

Ques. 26.—Do you remember the date of it?

(Question objected to because the paper is the best evidence of the date.)

Ans. 26.—In the last days of June, 1846.

Ques. 27.—What did you give the Government for that orchard?

(Objected to as immaterial.)

Ans. 27.—If I am allowed I will make a suggestion; I have been sworn to tell the truth in the case of Andres Castillero, but now I see I am being examined in another case.

Ques. 28.—I repeat the question, please answer it.

Ans. 28.—I gave it nothing.

Ques. 29. Was the orchard granted to you alone, or with others, and if with others, whom?

Ans. 29. It was granted to me, Juan Castañeda and Luis Arenas.

Ques. 30. By the terms of the grant, was it a donation, or a sale?

(Question objected to as before, and the counsel for the United States here requests the Commissioner to instruct the witness that he is under no obligations to answer questions respecting any of his private affairs in no manner connected with the claim of Castillero now on trial.)

(Commissioner refused to give such instruction upon the ground that the questions have some bearing to the answers of the witness in his examination in chief.)

(Ruling excepted to.)

Ans. 30.—I think it was a sale.

(Objected to.)

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Ques. 31. Did neither Castañeda nor Arenas, pay the Government anything for the orchard under that grant?

Ans. 31. I think they did pay it, the Government.

Ques. 32. What did they pay it?

(Objected to.)

Ans. 32. According to what they told me, they paid cattle and seed, and a small amount of money.

Ques. 33. How many cattle, how much seed, and how much money did they pay, and when did they pay it?

(Objected to.)

Ans. 33. I do not know the quantity, nor when they paid it.

Ques. 34. Did they obtain a receipt for the same from the Governer, or any other official?

(Objected to.)

Ans. 34. Yes, there was a receipt.

Ques. 35. In whose handwriting was that receipt, and by whom signed?

(Objected to.)

Ans. 35. It was signed by Pio Pico, the Governor. I think it was in the handwriting of Castañeda, but I am not sure.

Ques. 36. What was the date of the receipt?

(Objected to.)

Ans. 36. June, 1846, I think, about the end of the month. I am not sure, because I only saw the receipt once.

Ques. 37. How do you know that Castañeda wrote that Grant?

(Objected to.)

Ans. 37. Because I saw it written.

Ques. 38. In what house in Los Angeles was it written?

(Objected to.)

Ans. 38. At the house of Luis Arenas.

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Ques. 39. Was Castañeda in Los Angeles in the month of June, 1846?

(Objected to.)

Ans. 39. No, he was not there.

Ques. 40. Was Pio Pico in Los Angeles, in the month of June, 1846?

(Objected to.)

Ans. 40. I don't know, I was not there in June, 1846?

Ques. 41. Did you see Pio Pico sign that Grant?

(Objected to.)

Ans. 41. No.

Ques. 42. In what month did Castañeda write that Grant?

(Objected to.)

Ans. 42. In July, or August, 1846.

Ques. 43. Is this man Crane, with whom you had the conversation mentioned in your 16th answer on this cross-examination, the same person to whom you stated under oath when you appeared as a witness on behalf of the United States before the Land Commission, in the Claim of Redman & Clayton, for the Orchard of Santa Clara, that you had told many lies?

(Question objected to as incompetent, because Counsel for the Claimant should first exhibit to the witness the deposition or statement to which he refers, before cross-examining the witness as to that deposition. The Counsel for the United States asks the Commissioner to require of the Counsel for the Claimant to produce and exhibit to the witness the deposition or statement to which he refers, before putting the question.)

[The Counsel for the Claimant here states that he will save the Commissioner the trouble of ruling upon said request of the U. S. Attorney, by asking an adjournment of this examination until to-morrow, when he will produce said deposition.]

Examination adjourned until to-morrow Nov. 27, 1857, at 11, A.M.

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SAN FRANCISCO, November 27, 1857, 11 A. M.

Cross-Examination of Benito Diaz, a witness produced on behalf of the United States this day continued.

PRESENT: The United States Attorney by E. Randolph; A. C. Peachy for Claimant.

Ques. 43, withdrawn.

Ques. 44.—Did you appear as a witness on behalf of the United States, before the United States Land Commission, in December, 1854, in the claim of J. W. Redman and others, for the orchard of Santa Clara, and was your deposition taken in that case?

Ans. 44.—Yes.

Ques. 46.—Look at the 13th question and your answer thereto, on the cross-examination, as it appears written in your deposition taken before the Land Commission on the 28th Dec. 1854, in the said claim, and filed in the office of the said Commission, which said question and answer, are in the following words:

"13th Question.—Have you had any conversation with James C. "Crane, in the City of San Francisco, on the subject of the affidavit "which you made on the 4th Dec. 1854, before this Board, or about "your giving testimony in this case, if yea, when did that conversa- "tion occur, and what did you say as to money which was to be paid "to you for testifying against this claim?

"Answer.—I have had a conversation with said Crane on the sub- "ject of said affidavit. Crane proposed to me that he would give "testimony in this case, and asked me how much Padre Nobles would "pay. I told him I did not know, he could go and see the Padre, and "arrange it himself. Crane told me he had not been able to affect an "arrangement with the Padre about it.

"I and Crane have had many conversations in which we have both "made misrepresentations to each other to deceive each other.

"The conversation I had with Crane about said affidavit was held "at the St. Francis' Hotel, in this city, some three or four days "after I made said affidavit.

"As to what I said to Crane about what money I was to receive "for testifying against this claim, I have told Crane many lies."

Look also to your answer to the 15th question on the cross-examination in the said deposition, which question and answer is in the following words:

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"15th Question.—Did you ever mention to said Crane the sum of "$2000, in the conversations you say you had with him, as a sum to "be paid to you either directly or contingently, for testifying against "this claim?"

"Answer.—I have mentioned to him $1000, $2000, $3000, and "$4000, at different times, as sums which I am to receive for testify-"ing against this claim. It was false, but I told him so to get rid of "him.

"Crane told me I had done a poor business by taking sides with "the Padres, that if I had only taken sides with him, he could pro-"bably have got me $4000, or $5000, from the attorneys."

And state if said questions were propounded to you, and whether those answers were made to said questions, and whether the Crane who is mentioned in said questions and answers is the person of that name with whom as you have stated in your 16th Answer of your cross-examination in this deposition, you conversed on the subject of this petition of Castro's, written by you at the request of Padre Real?

(The U. S. Attorney admits that the deposition of this witness referred to in above question, and shown to the witness, is the same deposition which is on file among the papers of the Land Commission in the claim of Joshua W. Redman, Chas. Clayton, and the Heirs of James M. Jones, dec'd, to the Orchard of Santa Clara, and that the same was produced on this examination by a deputy from the Surveyor General's office, in charge of the archives.)

Ans. 45.—I am not a lawyer, and do not know whether I should answer this question, but I think it is unnecessary to answer this question, because the records are public, and I am here to testify in another and different case.

Ques. 46.—I repeat the question and insist upon your answering it?

(The U. S. Attorney requests the Commissioner to instruct the witness that his answer just given is sufficient, except as to the identity of Crane, and with that exception he cannot be compelled lawfully to give any other answer.)

[Commissioner refuses to give such instructions, and takes the answer subject to objections.]

Ans. 46.—With reference to Crane he is the same person of whom have spoken in this deposition. (Witness refuses to answer further than as he had already answered.)

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(Commissioner rules, that the witness is bound to answer the question fully, unless it will tend to criminate.)

(The witness claims the right to counsel and the judgment of the Court, on the ground that he has already sufficiently answered the question.)

(Examination on this point suspended until reference is had to the Court.)

Ques. 47.—Where were you when Padre Real showed you the paper which he asked you to copy?

Ans. 47.—Padre Real did not show me any paper. Padre Real was in his room, and he dictated to me with a paper in his hand, but I did not see the paper.

Ques, 48.—Where did that take place?

Ans. 48.—At the Mission of Santa Clara.

Ques. 49.—In what year?

Ans. 49.—I have already said several times that I do not remember the year.

Ques. 50.—Have you no idea what year it was in?

Ans. 50.—I have an idea, but I have no certainty.

Ques. 51.—What is your idea on the subject?

Ans. 51. That it was at the close of 1846, or in the year 1847.

Ques. 52.—Who was present when Padre Real asked you to make a copy of that instrument?

Ans. 52.—Juan Castañeda, and a person who was the porter of the Mission.

Ques. 53.—Who was the porter of the Mission; was he Indian, or Mexican? Is he living?

Ans. 53.—He was a person named Gutierrez; I don't know whether he was a Mexican, or Spaniard; I don't know whether he is dead or alive.

Ques. 54.—Do you know where he is?

Ans. 54.—I do not.

Ques. 55.—In whose handwriting was the instrument which Padre Real asked you to copy?

Ans. 55.—I have already said that I have not seen it.

Ques. 56.—How do you know that Padre Real had in his hands an instrument in writing, if you did not see it?

Ans. 56.—Because I saw a paper in his hands and he dictated to me.

Ques. 57. Did you ask the Padre if the paper he had in his hands was signed by any person?

Ans. 57. No.

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Ques. 58. Did you ask the Padre why in December 1846, or in the early part of the year 1847, he asked you to copy a paper bearing date the 27th June, 1846?

(Question objected to because it assumes that the witness has stated that he wrote the paper in question during the latter part of December 1846, or first of January 1847, whereas the witness has stated that he had an idea that he wrote it in the latter part of the year 1846, or sometime during the year 1847, and the circumstances which the witness has stated whereby to ascertain the time show that it must have been late in the year 1847, if not in the year 1848.)

Ans. 58. No; because it was a matter which did not concern me. I wrote what I was told to.

Ques. 59. Who was present when you demanded possession of the orchard from Padre Real?

Ans. 59. Castañeda, myself and the Padre.

Ques. 60. No one else?

Ans. 60. When we spoke to him about that matter, there was no one else present.

Ques. 61. What right did you have for demanding possession of the orchard from Padre Real, and what reasons did you give him for demanding it?

(Question objected to as irrelevant.)

Ans. 61. The title which we showed him.

Ques. 62. Did you show him your title when you made your demand for the orchard?

(Objected to.)

Ans. 62. We showed him a copy, because Don Antonio Osio had lost the original.

Ques. 63. Where is Don Antonio Osio?

(Objected to.)

Ans. 63. In Lower California.

Ques. 64. Was the copy which you showed him an accurate copy of the original?

(Objected to.)

Ans. 64. Yes.

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Ques. 65. Did you have any difficulty with Padre Real about that affair?

(Objected to.)

Ans. 65. Yes.

Ques. 66. Was it before or after you made this copy that you had the difficulty with him?

Ans. 66. After.

Ques. 67. When you demanded possession of Padre Real, did you tell him that although your title bore date the latter part of June 1846, that in fact it was not made until the latter part of July, or beginning of August of that year, that you saw Castañeda with the document of title in Los Angeles in the latter part of July or the early part of August, 1846, after his arrival there in the expedition of José Castro, which was not begun until the 11th or 12th of July 1846?

(Question objected to.)

Ans. 67. I told him no such thing, because I was not aware that it contained such a defect.

Ques. 68. What defect do you allude to?

Ans. 68. Of being ante-dated.

Ques. 69. Did you find out the defect of its being ante-dated before or after you sold out your interest in that title?

Ans. 69. Afterwards.

Ques. 70. When you saw these documents in company with Mr. Laurencel, and recognized on the first inspection of them your own handwriting in the instrument which you say you copied for Padre Real, and also the handwriting of Castañeda, in Castillero's first petition, why did you say that you recognized only Castañeda's handwriting; why did you not tell Mr. Laurencel and the gentlemen in whose presence you were inspecting these documents, that you also recognised your own handwriting? Were you keeping yourself in reserve, so that you might sell yourself to the party who would bid highest, and how much has Mr. Laurencel promised to pay you for your testimony in this case in behalf of the United States?

(So much of the question objected to as assumes that there were bidders for the testimony of the witness. Counsel for the claimant in this cause having a right to speak only for his own clients; and as to so much of the question as asks the witness how much Mr. Laurencel has promised to pay him. It being proper first to ask the witness if Mr. Laurencel had promised to pay him anything.)

(Counsel for the claimant withdraws the words "and how much has

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Mr. Laurencel promised to pay you for your testimony in this case in behalf of the United States," and substitutes as follows: And has Mr. Laurencel promised directly or indirectly to pay you anything for your testimony in this case on behalf of the United States; if yea, how. much?)

Ans. 70. When we first looked at the documents I did not wish to say that it was my handwriting, because I dislike to testify, and if it had not been that one of the witnesses recognised my handwriting, I never would have said that it was mine; with reference to the insult which is offered me, that I was reserving myself for the highest bidder, I do not know his motive for saying it. When I complained to Mr. Laurencel of the trap which they had laid for me, and that the fees allowed by government would be insufficient to pay my expenses, he promised me that if I would make out my account, and deduct therefrom the amount received from the government, he would pay the deficit.

Ques. 71. Are you on terms of friendship with James Crane, of whom you have spoken; have you seen much of him of late; where does he reside; has he been in San Francisco during the last month?

Ans. 71. We have known each other for a long time; I see him nearly every day; his place of residence is San Rafael; I think he has been here in the past month.

Ques. 72. When you saw this document that you copied, as you say you have an idea you did, in the latter part of the year 1846, or in the year 1847, I mean when you first inspected it at the instance of Mr. Laurencel, seeing it signed by José Castro, seeing on it a marginal decree dated 29th June, 1846, which marginal decree was signed by Pacheco with his rubric, and name, and seeing that this paper bears date June 27, 1846, did you think it honest to conceal your knowledge of your handwriting in this paper, and of everything else you knew about it, tending to show that it was fraudulent, and ante-dated, for the purpose of avoiding the inconvenience of being made a witness on behalf of the United States in this case?

Ans. 72.—The first time I looked at it I did not see the date; it was the second time I saw the date.

Ques. 73.—How many days intervened between your first and second inspection of this document?

Ans. 73.—About fifteen days, more or less.

Ques. 74.—Whom did you first tell that this document was ante-dated?

Ans. 74.—I have told no one that it was ante-dated.

Ques. 75.—Whom did you first tell that this document was written by you, sometime after it purports on its face to have been made?

Ans. 75.—I have said no such thing to any one.

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Ques. 76.—On your first inspection of this document did you read it?

Ans. 76.—No.

Ques. 77.—Did you see the whole document at that time; did you see the signature to it?

Ans. 77.—No; as soon as I recognized my handwriting, I retired to avoid being questioned.

Ques. 78.—Did you not turn over the leaf, or were you satisfied at your glance at the first page?

Ans. 78.—I did not; as soon as I saw my handwriting I retired.

Ques. 79.—You have said you came to inspect this document with Mr. Laurencel on that occasion, why did you not make the inspection; why did you not examine the document so far as to learn its contents; why did you not look at the signature and the marginal decree, and the signature to the same, and why did you not note the date if you took the trouble to come all the way here to inspect that paper; is it not somewhat singular you should have been content with a glance at the first page; did no one ask you to examine it more minutely?

(So much of the above question as assumed that the witness came from a distance, that is to say, from his hotel or some place without the building, whereas he has testified that he was in the building in company with Mr. Cambuston on other business, objected to.)

Ans. 79.—I did not come here expressly to examine the paper; near Mr. Della Torre's room Mr. Laurencel invited us, myself and Cambuston, to see if we knew the handwriting of a document, and the first he showed us was Castañeda's; ; they afterwards turned to the first to see if we knew it; then they all remained there, and I as soon as I saw my handwriting went away; I did not wish them to put me any more questions; no one told me to examine it more minutely.

Ques. 80.—Did not the gentleman at whose instance you went into the room to examine the handwriting, as you have stated, ask you in whose handwriting you believed those documents to be?

Ans. 80.—He just showed me Castañeda's, and I did not give time for anything further.

Examination adjourned until Monday, Nov. 30, 1857, at 11 A. M.

San Francisco, Nov. 30, 1857.

Examination of Benito Diaz, a witness produced on behalf of the United States, this day continued.

Present: The United States Attorney, by E. Randolph; A. C. Peachy, for Claimant.

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The parties and the witness having appeared before the Court; and the Court, after hearing argument upon the point, having decided the ruling of the Commissioner upon question 45 to be correct, and that the witness must fully answer that question, it is put to the witness by the Attorney for the claimant, as follows:

Ques. 81.—I repeart question 45, please answer it fully?

(The witness before answering this question insists upon seeing his answer to question 16 of his cross-examination, referred to in question 45; his answer is read to him.)

Ans. 81.—In relation to the said questions and answers, I think they are the questions which were put to me, and the answers which I gave, unless it be a mistake or misinterpretation, because I cannot remember them exactly after so long a time; James Crane is the same person to whom I referred in my said answer, No. 16.

Ques. 82.—Was the deposition in which you gave those answers to those questions made under oath?

Ans. 82.—It was.

Ques. 83.—Have you any reason from your present recollection or remembrance of the matter to which your answers to the said questions related, to doubt that your answers to the same as given by you on the taking of the said deposition are correctly set forth as they are written in the 45th question?

Ans. 83.—That deposition may be correct, but I do not exactly remember what my answers then were.

Ques. 84. You state in your 80th answer on your cross-examination that Mr. Laurencel first showed you the Houghton document, and showed you Castañeda's handwriting in the said document, and that you did not give him time for any thing further; did he not afterwards seek you and enquire if the Castro petition was in your handwriting?

Ans. 84.—No.

Ques. 85.—Did Mr. Laurencel have any conversation with you on the subject of those papers before you went to San José, as you stated you did?

Ans. 85.—No.

Ques. 86.—Did any person converse with you about those papers after you first saw them, and before you went to San José; if yea, who?

Ans. 86.—I had a conversation with Fernandez and Antonio Maria Pico.

Ques. 87.—Did you not have a conversation with Mr. Crane?

Ans. 87.—I think not, because he was not here in those days.

Ques. 88.—You say during that interval you had no conversation whatever with Mr. Laurencel upon that subject; did you have no con-

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versation with any one sent to you by Mr. Laurencel, or whom you suspected to have been sent by him to you about that matter?

Ans. 88.—No. During that interval I had no conversation with anybody sent to me by Mr. Laurencel, nor with Mr. Laurencel about it.

Ques. 89.—During your visit to San José, did you meet with James Alexander Forbes?

Ans. 89.—No.

Ques. 90.—I mean did you see Mr. Forbes in the interval between your departure from and return to San Francisco, on the occasion of that visit? and not simply whether you saw him in San José.

Ans. 90.—I did not see him from the time I left San Francisco until I returned.

Ques. 91.—During that interval did you converse with any person upon the subject of these papers, or the matters to which they relate?

Ans. 91.—Yes.

Ques. 92.—With whom; and state particularly your conversation.

Ans. 92.—Yes. I conversed with Fernandez, who was on board of the steamer going down to San José; I do not remember of conversing with any body else.

Ques. 93.—On your return to San Francisco, with whom did you first converse on the subject of those documents, or the matter to which they relate?

Ans. 93.—Mr. Laurencel was the first person with whom I spoke.

Ques. 94.—How many days elapsed between your first inspection of these documents and your return from San José?

Ans. 94.—Eight or ten days, more or less.

Ques. 95. Did you seek Mr. Laurencel, or did Mr. Laurencel seek you, for the conversation you had with him on your return from San José?

Ans. 95.—We met on Montgomery street.

Ques. 96.—Did you meet by appointment?

Ans. 96.—No.

Ques. 97.—Between the times of your first inspecting this document, and your meeting Mr. Laurencel on Montgomery street, as stated in your answer before the last, had you received from Mr. Laurencel, or from any other person, any written communication upon the subject of this document, or upon the matter to which it relates?

Ans. 97.—No, I have not received any communication.

Ques. 98.—What did Mr. Laurencel say to you when you met him on Montgomery street?

Ans. 98.—It was then he invited me to come and see the papers on the next day.

Ques. 99.—Was that all he said to you on that occasion?

Ans. 99.—After having saluted each other, that was all we said.

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Ques. 100.—Are you sure you said nothing more to him on that occasion, or he to you?

Ans. 100.—Yes, I am sure.

Ques. 101.—With whom did you have the next conversation on that subject?

Ans. 101.—After that conversation I do not remember to have conversed with any body about that matter.

Ques. 102.—You have stated that Mr. Laurencel met you in the Hall of this Building, and invited you into this room to inspect the papers in the Houghton Document, that on that inspection you recognized an instrument in that Document to be in the hand-writing of Juan Castañeda, that you also recognized the Castro petition to be in your own hand-writing, that you stated to Mr. Laurencel that you recognized only Castañeda's hand-writing, and left him hurriedly so as to give him no time to enquire in whose hand-writing was the Castro petition, that you held no conversation or communication with Mr Laurencel or any agent of his directly or indirectly on the subject of those documents, or on the matters to which they relate, until you met on Montgomery street as you have stated. Is this not so?

Ans. 102.—Yes.

Ques. 103.—You have stated that after your conversation with Mr. Laurencel on Montgomery street you, do not remember to have had any farther conversation with any person whatever on the subject of these documents, or the matters to which they relate. Is it not so?

Ans. 103.—Yes.

Ques. 104.—You have said that your conversation with Mr. Laurencel on Montgomery street was nothing more than a salutation, and an invitation on the part of Mr. Laurencel to you to inspect these documents the next day. What answer did you give Mr. Laurencel?

Ans. 104.—That I would come to see them.

Ques. 105.—Did you, and when?

Ans. 105.—I came the next day.

Ques. 106.—Where did you come from, and with whom?

Ans. 106.—I came from the California Hotel; I think I came in company with Crane.

Ques. 107.—What Crane?

Ans. 107.—James Crane.

Ques. 108.—Did Crane accompany you to the room next to this, and did he too inspect those documents?

Ans. 108.—He did not come to the room, nor did he examine the documents.

Ques. 109.—Where did you leave Crane when you came in the room to inspect the document? Answer particularly.

Ans. 109.—I do not remember whether I left him at the door

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of this building below, or at the corner, at the corner of the street.

Ques. 110.—How far is the corner of the street from the entrance to the building?

Ans. 110.—It may be about 30 or 40 varas.

Ques. 111.—Well, you came in to examine the papers. State everything that was said, and done, on the occasion of that examination.

Ans. 111.—I have already answered that.

Ques. 112.—I am not satisfied with the answer. I repeat the question; answer it.

Ans. 112.—I came in, and Messrs. Randolph and Laurencel and I think the gentleman who brought the papers from San José, were present. Mr. Randolph asked the latter gentleman for the papers, and he gave them to Mr. Laurencel, and then he showed them to me one by one, and he asked me if that really was my hand-writing, and after asking me several questions he went on to show me the document written by Castañeda, and another petition which is there made by Castillero, and he asked me if I knew the hand-writing and signature of Castillero, and afterwards if I knew that of the document of posession. I answered the questions which he put to me, and when I saw he asked nothing further I prepared to leave. This was all that occurred.

Ques. 113.—You say that after asking you if a certain paper was really in your hand-writing, Laurencel asked you various other questions; what answer did you give to the question whether that document was in your hand-writing, and what were the various other questions asked you by Mr. Laurencel?

Ans. 113.—I answered him that it was really my hand-writing. He asked me when I wrote it, where, and who were present, and several other questions which I do not remember.

Ques. 114.—Where did you go after you left the room?

Ans. 114.—I think I went to take some coffee in Clay street; I went alone.

Ques. 115.—Did not Crane wait for you?

Ans. 115.—No.

Ques. 116.—When did you next see Crane?

Ans. 116.—The night of the following day.

Ques. 117.—Are you sure you had not seen him in the meantime?

Ans. 117.—I am, because I was looking for him to have him translate the Subpœna for me.

Ques. 118.—When you and Crane were coming together to this building on your last visit of inspection, did you have any conversation with him about the object of your visit?

Ans. 118. I told him I was coming to see the papers; that was all the conversation I had with him.

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Ques. 119.—Did you tell him what papers you were coming to see?

Ans. 119.—Yes.

Ques. 120.—What did he say?

Ans. 120.—He asked me whether I was coming to see the same which I had seen first.

Ques. 121.—What did you tell him?

Ans. 121.—That I was coming to see the same papers.

Ques. 122.—Did Crane ever ask you any questions about those papers before or after that time?

Ans. 122.—When he heard the conversation which I had with Fernandez, he asked me if it was really my hand-writing, and I replied to him that it appeared to be.

Ques. 123.—Did you never have any other conversation with Crane after that?

Ans. 123.—Touching the papers I had none.

Ques. 124.—Did you and Crane ever have any conversation touching Mr. Laurencel?

(Objected to as irrelevant.)

Ans. 124.—We have had several.

Ques. 125.—Did you have them about the time that you first examined these documents or at any time afterwards?

Ans. 125.—After having received the Subpœna we have conversed considerably about him; never before.

Ques. 126.—Did Crane ever tell you that he had conversed with Laurencell about these papers, or on this subject?

(Question objected to as irrelevant and hearsay.)

Ans. 126.—No.

Ques. 127.—Did this man Crane ever give his deposition in the claim of Redman, Clayton and others for the Orchard of Santa Clara, before the United States Land Commission?

Ans. 127.—I do not know.

Examination adjourned until Dec. 1. at 11 A. M.

San Francisco, Dec. 1, 1857.

Examination of Benito Diaz, a witness produced on behalf of the United States, this day continued until to-morrow Dec. 2, 1857, at 11 A. M.

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SAN FRANCISCO, Dec. 2. 1857.

Examination of Benito Diaz, a witness produced on behalf of the United States, this day continued.

PRESENT.—The United States Attorney by E. Randolph; A. C. Peachy for Claimant.

Ques. 128.—Do you remember ever to have sworn in any suit that you would not believe James Crane on oath?

Ans. 128.—I remember to have sworn that I would not believe him in the testimony he gave in that matter, or something of that kind.

Ques. 129.—Where were you in the month of May 1846? name all the places.

Ans. 129.—I cannot tell exactly where I was.

Ques. 130.—Where were you in the month of June 1846? name all the places.

Ans. 130.—Here in San Francisco, at Santa Clara and Contra Costa.

Ques. 131.—Where did Gen. Castro have his head quarters in the month of June 1846?

Ans. 131.—In Santa Clara.

Ques. 132.—On your return from Los Angeles to Monterey how many days did it take you to make the journey?

Ans. 132.—I cannot remember, but I think I was some ten or twelve days.

Ques. 133.—How many days did it take you to make the journey from the plains of Monterey to Los Angelos on the Castro Expedition?

Ans. 133.—I think we were ten or twelve days also.

Ques. 134.—How many days did you remain in Los Angeles?

Ans. 134.—I do not remember, but I know that it was the night before they raised the American Flag; that was when it was taken by Commodore Stockton the first time.

Ques. 135.—Who came up with you from Los Angeles?

Ans. 135.—Several; I remember Jose Fernandez; a person named Chabolla, (not Pedro); Antonio Maria Pico; (Castañeda did not come); Bernardino Soto; Lazaro Soto; I do not remember any more, tho' there were more.

Ques. 136.—How long after your return to Monterey was it, before Juan Castañeda returned?

Ans. 136.—Three or four months I think, I am not sure.

Ques. 137.—You say the papers noticed a controversy you had with Padre Real about this orchard. Do you remember what the papers said about it? but first, state if you can, the nature of the controversy.

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Ans. 137.—It was about a letter which I wrote to Father Real; I do not remember what the papers said.

Ques. 138.—Did Padre Real reply to that letter?

Ans. 138.—I think he did.

Ques. 139.—Where was your letter to Padre Real written?

Ans. 139.—In Monterey.

Ques. 140.—Was that letter written before or after you wrote the Castro petition?

Ans. 140.—I think it was written after; I cannot remember how long after; I think it was a short time after.

Ques. 141.—Was it as much as a month after?

Ans. 141.—I cannot recollect.

Ques. 142.—How long after you returned from Santa Clara to Monterey was it that you addressed the letter to Padre Real?

Ans. 142.—I cannot recollect.

Ques. 143.—Your title to the orchard bears date the 30th day of June 1846; why did you allow so much time to elapse between the date of your title and your application for the possessien of this orchard?

Ans. 143.—Because when we returned from Los Angeles I was as a prisoner in Monterey; I could not leave there; also because I had not the titles; Castañeda had them.

Ques. 144.—How long after you received your titles from Castañeda was it that you made the demand for possession which resulted in the difficulty of which you have spoken?

Ans. 144.—Shortly after Castañeda arrived, and when we heard one day that Don Antonio Osio was coming to Santa Clara, we sent the title by him that he might solicit possession in our name, the Padre replied to us when Osio returned after some time, that he could not give us possession, because he alleged that he held a title of the Indians, and Don Antonio Osio said to us that he had lost our title, and a little while after this we learned that Father Real had given possession to Osio of the Garden, under a title as we learned afterwards made by Father Real, upon one of the blank sheets which Gen. Castro had left with him signed; this was the origin of our quarrel. Sometime after we sent the title by Osio, it was when I had the difficulty with the Padre of which the papers spoke. I cannot remember how long after it was.

Ques. 145.—How long after you entrusted Osio with this commission did you learn that Padre Real had put Osio in possession of the orchard under the title you have referred to?

Ans. 145.—I do not recollect, but my reply in the newspaper must mention something about that.

Ques. 146.—Was it before or after your visit to Santa Clara in person to make the demand which resulted in the correspondence which was published in the papers as you have stated?

Ans. 146.—It was after this visit.

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Ques. 147.—Look at the document shown you, purporting to be a grant from Pio Pico to Benito Diaz of the piece of land known under the name of "Punta de Lobos," situated in the port of San Francisco, which paper is brought from the archives of the Surveyor General of the State of California by a deputy from said office, being a part of the archives of the United States Land Commission existing in said office, and endorsed "No. 515. Joseph C. Palmer, et al, Punta de Lobos, "Doc. H. I. T. No. 1, annexed to Dep. of Benito Diaz, taken before "Com. Harry I. Thornton. Filed in office April 2d, 1853, Geo. "Fisher, Sec'y." "A No. 1 G. T. B. attached to deposition of Pio "Pico, July 5th, 1854, taken before Com. G. Thompson Burrill," and state if you know in whose handwriting is the said document; if you know the signatures to the same, and if said signatures are genuine?

(Question objected to as immaterial, the genuineness or falsity of that grant being irrelevant in this case.)

Ans. 147.—The handwriting is my own, and as far as I know the signatures are genuine.

Ques. 148. Is this a genuine document, and was it made at the time it purports to have been made?

(Question objected to as irrelevant to this cause, and because the grant referred to has been tried before the District Court for this district, who now hold the same under consideration.)

Ans. 148. I have already given my testimony about that.

Ques. 149. In that document I find the following words: "Dado "en la ciudad de Los Angeles a veinte y cinco de Junio de mil ocho "cientos cuarenta y seis en este papel comun por falta del sellado." Are not these words in your handwriting? And were they not written by you at the time you wrote the other part of the body of the instrument?

(Question objected to because it seeks to impeach the witness by a proof of a particular transaction.

Ans. 149. Yes.

Ques. 150. You have testified in this deposition frequently in answer to questions which have been propounded to you, that in the month of June 1846, you were in Santa Clara and Contra Costa, and not at Los Angeles. How can that be, seeing that the words quoted from your grant in the preceding question purport to have been written in the city of Los Angeles on the 25th day of June, 1846?

(Question objected to as to the preceding question.)

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Ans. 150. I have already said in other depositions why that document was dated at Los Angeles, although I had written it in San Francisco.

Ques. 151. Did you write that document in San Francisco?

(Question objected to as before.)

Ans. 151. Yes.

Ques. 152. When did you write it?

(Objected to.)

Ans. 152. I do not remember.

Ques. 153. It purports to have been written on the 25th day of June, 1846, does not the document tell the truth in that particular?

(Objected to.)

(Before the answer of the witness is interpreted from Spanish into English, the counsel for claimant requests that so much of the answer as refers to depositions made by the witness in other cases for an answer to this question be not written down. Answer written down subject to exceptions by counsel for claimant.)

Ans. 153. I do not know if it does tell the truth; according to the testimony which I have already given in the case of that title, I think it tells the truth.

Ques. 154. Was this title written by you at Los Angeles on the 25th day of June, 1846?

(Objected to.)

Ans. 154. No sir.

Ques. 155. Where was it written and when?

(Objected to.)

Ans. 155. It was written in San Francisco as I have already said, in the month of June, 1846. I do not remember on what day of the month it was written.

Ques. 156. The document is in your own handwriting, and is before you, you have inspected it, you find the date written out in full, and yet you say you cannot remember the day on which it was written; have you any reason to suppose that it was written on a different day from that which is its date?

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(Objected to.)

(The counsel for claimant asks the Commissioner to instruct the witness that he must not answer these questions by referring to any thing he has said in a former deposition on this subject, as an answer.)

(United States Attorney objects to the Commissioner giving such instruction, or prescribing in any manner how the witness shall answer.)

(The Commissioner instructs the witness as requested, subject to the exception of the U. S. Attorney.)

Ans. 156.—It was written some days before the day it bears date.

Ques 157.—I have asked you before if the document tells the truth with regard to its date, you have answered as follows: "I do not know if it does tell the truth, according to the testimony which I have already given in the case of that title I think it does tell the truth;" how do you reconcile that answer with what you have stated in your answer 156?

(Objected to.)

Ans. 157.—Because I wrote that title five or six days before the day on which it bears date, and I sent it to Los Angeles, and I do not know whether they signed it exactly on the 25th or not.

Ques. 158.—What right had you, writing at San Francisco in the month of June, 1846, a document of title to be signed by the Governor of California at Los Angeles, to fill up the date and write it out in full in said document?

(Objected to.)

Ans. 158.—The right which I had was, that my agent at Los Angeles wrote to me that the country was in a state of considerable disorder, and that I should send him the papers and "*Informes*" quickly, and if possible the title, so that there should be nothing to be done but to sign it.

Ques. 159.—Did you infer from the communication of your agent at Los Angeles that the country was in such a disordered condition that the Governor of California and his Secretary could not find time to fill up a blank in your title, with a date, and the name of the place where executed?

(Objected to.)

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Ans. 159.—I thought nothing about it, I made the title and set it.

Ques. 160.—You say that the title was written by you some four or five days before its date, why did you select the 25th day of June, 1846, to be the date of your title; why did you not put in the date on which you wrote it; does not the selection of that particular day out of all the days in the year, show that you did think about it, and that it was not inadvertently dated?

(Objected to.)

Ans. 160.—I put that date because I calculated the number of days that it would take the mail to reach there.

Ques. 161.—Was not that a very singular proceeding on your part; did you not consider it wrong for the Governor to sign, and the Secretary to counter-sign, an important document like this, on any day different from the date written in it; did you not fear at the time that the Governor and Secretary might be prevented by the document of title, not reaching them as early as the 25th June, or by pressure of business, or by some other circumstance, from signing that document on the day you selected for its date, and did you not think, if such were the case, that the date you had written out so fully, would have to be erased, and the real date of its execution put in, and that such alteration might subject your title to suspicion?

(Question objected to because it asks the witness' opinion upon certain points of morals and of law as to which his opinions are not admissible as evidence.)

Ans. 161.—I do not consider this a question but an accusation; at that time I did not consider that; this charge should rather be made against the Governor for having signed it; but I consider the title quite legal as the Governor consented to sign it.

Examination adjourned until to-morrow morning, Dec. 3d, 1857, at 11, A. M.

San Francisco, Dec. 3d, 1857: 11 A. M.

Cross-Examination of Benito Diaz, a witness produced on behalf of the United States, this day continued.

Present: The United States Attorney, by E. Randolph; A. C. Peachy, for Claimant.

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Ques. 162.—Was José Matias Moreno, who countersigned the title of Point Lobos, and whose name appears under the memorandum in these words: "Queda tomada razon de este titulo en el libro correspondiente," the same man who countersigned your title to the orchard of Santa Clara, and signed a similar memorandum in your title to the orchard of Santa Clara?

(Objected to.)

Ans. 162.—He is the same.

Ques. 163.—You say you wrote that title, you sent it by mail; who carried the mail; and how long did it ordinarily take the mail to to reach Los Angeles from San Francisco?

Ans. 163.—I do not remember who carried the mail; the time required for making the trip depended upon the class of mail carrier; the ordinary one required six or eight days, but the extraordinary went in less time; when I say mail, I mean the person who carried the communication; there were no post-offices established by the government at that time, nor any person regularly employed by the government to carry the mail.

Ques. 164.—I understand you to have said that you made two, and only two applications to Padre Real for the possession of this orchard, one application through Antonio Osio, your agent, and the other, you and Castañeda made in person at Santa Clara to Padré Real, and that it was during your visit for that purpose to Santa Clara that you wrote the petition of Castro concerning which you have testified; am I not correct?

(Objected to.)

Ans. 164.—Yes.

Ques. 165.—Did you not authorize Thomas O. Larkin to take possession of this orchard?

(Objected to.)

Ans. 165.—Yes.

Ques. 166.—Did Larkin make application to Padre Real, or any other person under that authority?

(Objected to.)

Ans. 166.—I know that he took some measures to obtain the possession, and afterwards he told us that he could not obtain it.

Ques. 167.—Did you and Castañeda give a joint authority to Mr. Larkin, or did you give it alone?

(Objected to.)

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Ans. 167.—He was authorised by both of us.

Ques. 168.—Did you confer that authority by a written instrument, or merely verbally?

(Objected to.)

Ans. 168.—We made him a conditional sale of the orchard of Santa Clara.

Ques. 169.—Was that conditional sale in writing, and did it contain the only authority to Mr. Larkin to take possession of the orchard of Santa Clara?

(Objected to.)

Ans. 169.—It was in writing, but I do not remember the particulars of the sale.

Ques. 170.—I repeat question 170; answer it.

(Objected to.)

Ans. 170.—I do not remember whether we gave it to him in writing or verbally.

Ques. 171.—Where was Mr. Larkin when you and Castañeda gave him this authority; and where was he when you made this conditional sale of which you have spoken?

(Objected to.)

Ans. 171.—At Monterey.

Ques. 172.—How long was this after Castañeda's return from Los Angeles?

(Objected to.)

Ans. 172.—I cannot fix the time, but a considerable time had elapsed?

Ques. 173.—Was it before or after you had made application for the possession of the orchard through Osio?

(Objected to.)

Ans. 173.—It was after.

Ques. 174.—How long after?

(Objected to.)

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Ans. 174.—I have an idea merely that it was two or three months.

Ques. 173.—You say that you and Castañeda made a conditional sale of this orchard to Mr. Larkin; did you not afterwards make an absolute sale of this orchard to Mr. Larkin?

(Objected to.)

Ans. 175.—The sale we made absolute, but the conditions are in a separate document.

Ques. 176.—Was this absolute sale to Mr. Larkin made before, or after, your application for the possession of the orchard through Osio?

(Objected to.)

Ans. 176.—It was afterwards.

Ques. 177.—Was this absolute sale made before or after your visit to Padre Real, when you wrote the Castro petition?

(Objected to.)

Ans. 177.—It was before, and I remember that we made the visit at the instance of Larkin himself, and I have an idea that he himself furnished us with the means of making the trip.

Ques. 178.—You have said that your conditional sale to Larkin was made a considerable time after your application for the possession of the orchard by Osio. You have also said that Osio lost your original title paper. How long after the said loss was it before you found them?

(Objected to.)

Ans. 178.—I do not remember the time, but I must have a letter which was written to me by José Fernandez when he found them.

Ques. 179.—Have you no idea of the time; was it one, two, three, or four weeks? I want your best recollection.

(Objected to.)

Ans. 179.—I cannot recollect; but to satisfy you I will say that it was three, four, or five weeks.

Ques. 180.—What did you do with the title papers when you recovered them?

(Objected to.)

Ans. 180.—I think it was then we made the sale to Larkin.

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Ques. 181.—What did you do with the papers?

Ans. 181.—When I received them from Fernandez, I delivered them to Castaeñda.

Ques. 182.—In your answer 180, which do you mean, your conditional or your absolute sale to Larkin?

(Objected to.)

Ans. 182.—There was only one sale to Larkin, but that sale was upon the condition that if he took possession of the Orchard he would pay us the money, and if not, it should all remain void; these conditions were written in a document separate from the sale.

Ques. 183.—Was that document of sale and the instrument containing the conditions written at the same time?

(Objected to.)

Ans. 183.—Yes.

Ques. 184.—Look at the document shown you, and say if you know the hand-writing? (Attorney for Claimant showing witness a document.)

(Objected to.)

Ans. 184.—Yes, I know it.

Ques. 185.—Do you know the signatures?

(Objected to.)

Ans. 185.—Yes.

Ques. 186.—Whose are they?

Ans. 186.—One is mine, and the other is Juan Castañeda's.

Ques. 187.—What date does that instrument bear?

(Objected to.)

Ans. 187.—Sept. 27, 1846.

Ques. 188. In whose handwriting is the body of it?

Objected to.)

Ans. 188. It is my handwriting.

Ques. 189. Look at this document and say if you know the handwriting and signature? (This is another document.)

(Objected to.)

Ans. 189. Yes.

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Ques. 190. In whose handwriting is the document; whose are the signatures?

(Objected to.)

Ans. 190. The handwriting of the document is that of Juan Castañeda, and the signatures are his and mine.

Ques. 191. In whose handwriting are the words "Monterey, Sbre. 27 de 1846," on the first document shown you, and in whose handwriting are the words "Y para que conste lo firmamos en el Puerto de Monterey, a 27 de Sebr. de 1846;" in the last document shown you; and were not these words intended to express the place where these documents were executed, and the date of their execution?

(Objected to.)

Ans. 191. The words mentioned and which are in the first document, are in my handwriting, and those of the second document are in Castañeda's handwriting, these words were used to express the place where the documents were executed, and the date of their execution.

Ques. 192. Were these documents made at the time and place they purport?

(Objected to.)

Ans. 192. Yes.

Ques. 193. Is the Castañeda whose name is signed to them, the same Castañeda of whom you huve spoken all along in this deposition?

(Objected to.)

Ans. 193. He is the same.

(It is admitted by the U. S. Attorney, that the two papers shown the witness, and concerning which he has testified in his answer on his cross examination, Nos. 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, are part of the archives of the United States Land Commission, in the claim of Thomas O. Larkin for the Orchard of Santa Clara, No. 744, which archives exist in and are a part of the archives of the U. S. Surveyor General for California, and that they were brought before this Commissioner by a deputy from the said Surveyor General's office, in charge of said archives.)

(A copy of the paper concerning which the witness has testified in

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his answers on cross-examination from No. 184 to 188, both inclusive, is attached to this deposition, and marked "Exhibit No. 1. X., annexed to deposition of Benito Diaz.")

(Also a copy of the paper concerning which the witness has testified in his answers on cross-examination from No. 189 to 193, both inclusive, is attached to this deposition, and marked "Exhibit No. 2, X. annexed to deposition of Benito Diaz.")

Ques. 194. Did Castañeda sign both of these documents in your presence?

(Objected to.)

Ans. 194. Yes, he did.

Ques. 195. You have stated that after you received a subpœna to testify in this case, you looked for James Crane for the purpose of getting him to translate it for you. Did you find him; did he translate it for you, and how long after you received it?

Ans. 195. I met him the same evening that I received the subpœna, and he translated it for me.

Ques. 196. Look at the document now shown you, purporting to be your deposition on behalf of the Claimants in the case of the United States vs. Joseph C. Palmer, No. 394, being an appeal from the Board of the U. S. Land Commission in Case No. 515 on the Docket of said Board, which deposition purports to have been begun on the 7th May, 1857, and to have been sworn to and subscribed on the 11th May, 1857, before J. Edgar Grymes, Special Commissioner, and look especially at the following words in said deposition:

"I know Mr. James C. Crane well, it is doubtful if he is a man of veracity, I would not believe him on his oath."

State if you made this deposition on oath, and if that part to which you have been referred, correctly expresses the testimony you gave on that occasion?

Ans. 196. I think it is not very correct; I remember that I said that I would not believe his oath in the aforesaid case.

Ques. 197. Who was the interpreter?

Ans. 197. The person who wrote the deposition, the Commissioner.

Ques. 198. Did you not say shortly after you made your first inspection of these documents, to Antonio Maria Pico and José Fernandez, or either of them, at the St. Francis Hotel in this city, that this document (meaning the Castro petition) was written by you, before you went south in the expedition of Castro which you have mentioned?

Ans. 198. No. They asked me if I had written the document,

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and I told them I had, but I believed it very good, because I had written it in Father Real's room; we said nothing about the expedition of Castro, nor of my having gone with it.

Ques. 199. You said, when you first examined these documents, you told Mr. Laurencel, that you only recognised the handwriting of Castañeda, and that you left immediately, so that Mr. Laurencel did not have an opportunity to question you concerning your own handwriting in the Castro petition, and this because you did not wish to be a witness in the case; you also testified that you had no communication with Mr. Laurencel, or any agent of his, directly or indirectly, until you met him on Montgomery street on your return from San José, on which occasion all that passed between you was a salutation, and an invitation from Mr. Laurencel thas you would inspect the same papers the following day; you also stated that you accepted the invitation, and did inspect the papers accordingly, and that on such inspection Mr. Laurencel asked you quite a number of questions, all of which you answered. By what means had your repugnance to giving your testimony in this case been overcome?

Ans 199. I never expected to be a witness; I never told Mr. Laurencel in my answers that I remembered when I had made it, I therefore considered they would not require me; if I had known they were going to take me by surprise, I would have endeavored to avoid it.

Ques. 200. It appears then you were not so much on your guard when you made the second inspection of these documents as you were when you made the first, and you had no suspicion then that Mr. Laurencel desired your testimony in this cause; why were you so much more confiding on the last inspection of the papers than on the first, and what reason had you to believe that the time of your writing the Castro Petition was a matter of importance to Mr. Laurencel, and that if he could not prove by you that it was written on a day different from that on which it bears date, you were in no danger of being called on to testify in this case?

Ans. 200.—I did not know that it was a matter of importance to him; I was not acquainted with the affair.

Ques. 201.—Have you nothing more to say in answer to the last question?

Ans. 201.—As Mr. Laurencel asked me several questions which were not very clear I answered him, and I did not suspect that he would call me as a witness; I knew nothing about the affair.

Ques. 202.—You have already declared positively that while you were making the second examination of these documents you considered that Mr. Laurencel would not require your testimony because you had not yet told him when you wrote the Castro petition, and you now declare positively, that at the time you made

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the second examination of the papers you knew nothing about this affair. These two declarations are contradictory; which do you now say is the true one?

(Question objected to because it assumes a contradiction where there is none, and asks the witness to admit that an answer which he has given is false, without any reason for assuming the falsehood of such answer.)

Ans. 202.—I do not understand the question: I see no contradiction in these two answers; I never supposed that my testimony was important.

Ques. 203.—When was the last time you saw the newspaper which spoke of the difficulty you had with Padre Real?

Ans. 203.—It is many years ago; I have only seen it once or twice since it was published.

Ques. 204.—Have you seen it during the last year?

Ans. 204.—No.

Ques. 205.—Has any one told you anything about it during that time?

Ans. 205.—No.

Ques. 206.—State fully what you remember of the publication in the newspaper you have mentioned?

Ans. 206.—I do not remember what the newspaper stated; I have an idea it spoke about the possession of the orchard.

Ques. 207.—Did that publication contain a letter of yours to Padre Real; if yea, did it contain the Padre's reply to your letter? You have stated in your Cross Examination that you made a reply to some letter of the Padre's after you had discovered the treatment of the Padre and Osio of which you have spoken. When was your reply made?

Ans. 207.—I do not remember, but I think there is a letter in the publication, a letter of mine to Father Real; he first published a letter of mine, and I afterwards published my réply; Father Real said something no doubt accompanying my first letter.

Ques. 208.—Was Mr. Larkin's name mentioned in your letter to Padre Real which was published?

Ans. 208.—I do not remember.

Examination in Chief Resumed.

Questions by United States Attorney.

Ques. 1.—You have been asked a great many questions on your Cross Examination, and a great many subjects have been intro-

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duced; do you now desire to say anything in explanation of any of the answers you have made?

Ans. 1.—I would like to read all my deposition.

Ques. 2.—Was there any newspaper published in California in the year 1846, before the Americans took possession of the country, and how long after was it before one was published?

Ans. 2.—There was no newspaper published in California before its conquest by the Americans, shortly after that there was.

Ques. 3.—When in June 1846 Genl. Castro had his head-quarters at Santa Clara, did he have a Secretary, and if so, who was he?

Ans. 3.—He had; sometimes Castañeda was his Secretary, and at other times Arce.

(Question and Answer objected to as intraducing a new subject after the direct and Cross Examination of the witness has been concluded.)

Ques. 4.—Was one of these Secretary and the other Assistant, and if so which?

Ans. 4.—Juan Castañeda was the Secretary and the other was the Assistant.

(Objected to as before.)

Ques. 5.—Were both of these persons, or either of them present with Genl. Castro at Santa Clara during the said month of June 1846?

Ans. 5.—Yes, they were both there.

(Question and Answer objected to as before.)

Ques. 6.—During that time did you write for Genl. Castro any paper whatsoever?

Ans. 6.—I do not remember to have written.

(Objected to as before.)

Ques. 7.—Do you remember to have acted as his Secretary at any time during that campaign?

Ans. 7.—I never was his Secretary.

(Objected to as before.)

Ques. 8.—Do you remember anything which occurred on the occasion of your visit to Padre Real when you wrote the petition

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signed Jose Castro which fixed in your recollection that circumstance? I mean anything occurring between you and Castañeda, whom you have said was your companion?

Ans. 8.—What I have fixed in my memory is that we went on that occasion to claim the orchard of Santa Clara.

(The United States Atorney here asks the Commissioner to read the question again to the witness. To which the Counsel for the Claimant objects, on the ground that the witness has already answered the question, and that a second reading might have the effect of reminding the witness that he has left unsaid something which is expected from him.)

(Question is read again to the witness under exception.)

Ques. 9.—Do you remember anything which passed between yourself and Castañeda during that visit, or soon after leaving, or at any time subsequent, which tends to fix in your recollection the fact of your having written that petition at that time?

Ans. 9. I remember something; when I and Charley Clayton and James Crane went to Sonoma in the year 1849 or 1850 to buy Castañeda's share in the Orchard of Santa Clara Castañeda made some explanations to me and some complaints of Padre Real, about the bad treatment he had given him in the affair of the orchard, that we did not take possession of the orchard on account of Father Real, and he then told me that he had written some things to Father Real, and that he had hopes of some day getting revenge. He did not tell me what he had written to Father Real.

Ques. 10.—Is not the Crane of whom you have testsfied a person well known to a great many of the native Californians, and is he not very frequently employed by persons interested in law suits growing out of matters which happened under the Mexican Government of this country, as an Agent to hunt up witnesses and procure testimony?

(Question objected to as leading.)

Ans. 10.—Yes.

Examination adjourned until 12 o'clock, Dec. 4, 1857.

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SAN FRANCISCO, Dec. 4, 1857.

Examination of Benito Diaz, a witness produced on behalf of the United States, this day continued.

PRESENT.—United States Attorney, by E. Randolph; A. C. Peachy for Claimant.

Counsels for the respective parties having no more questions to put to the witness, and his deposition being read over to him, he desires to correct the following statement made by him in his 18th Ans., on his direct examination, which correct statement is as follows:

"Having examined the documents which were shown to me yesterday, on Cross Examination, being the document numbered No. 1 X, annexed to the deposition of Benito Diaz, and No. 2 X, annexed to the deposition of Benito Diaz, I see that Castañeda returned to Monterey three or four weeks after I arrived there."

BENITO DIAZ.

Sworn to and subscribed before me this 4th Dec. 1857.

{SEAL}

CUTLER McALLISTER,
U. S. Com.

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EXHIBIT "No. 1 X," ATTACHED TO THE DEPOSITION OF BENITO DIAZ.

Por el presente damos poder ampleo y bastante al Sr D. Tomas O. Larkin para que tome posecion de las huertas de St^{a} Clara y S. José que hemos comprado legalm^{te} al Gobierno de el Departam^{to} como consta de las escrituras que con esta fhā, entregamos á dchō., Sor ^{e} para su constancia y que hago el uso que combenga á ambas partes.

Monterey Sbrē 27 de 1846.

(Signed) BENITO DIAZ.

(Signed) •J. DE CASTAÑEDA.

(Endorsed)

NO. 754.

Thomas O. Larkin,

⅔ of Orchard of Santa Clara.

Exhibit No. 3.

Filed in office July 25, 1854.

GEO. FISHER,
Sec'y.

Recorded in Rec. of Evid., vol. 18, p. 594.

(Endorsed)

Power of Attorney from Diaz & Castañeda respecting two orchards, Santa Clara & San José.

"Exhibit No. 3."

Recorded in the Book B of records of the municipality of Monterey, page 31.

March 2nd, 1850.

WM. S. JOHNSON.

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EXHIBIT "No. 2 X," ANNEXED TO THE DEPOSITION OF BENITO DIAZ.

Todas los q las presentes rieren Sabed, q los q abujo firmamos nos comprometamos á vender á D. Tomas O. Larkin la parte de las huertas de Santa Clara y San Jose, q nos pertenecen por la compra que de ellas hicimos al Gobierno del Departm^to como consta de las respectivas escrituras q en esta fecha entregamos al espresado. Sor Larkin siendo las condiciones de la venta las siguientes a saber que dentro de dos jueses contadas desde esta fecha, si se verifica la venta, el Sor Larkin nos dará dos mil y quinientos pesos en plata, y en caso de no convenirle, que dara el contrato sin efecto, devolviendonas las apresadas escrituras. Por tanto, si dentro del tiempo mencionado faltavemos alo estipulado en el presente documento; nos obligamos á satisfaces al referida Sor Larkin los perjucios q por la falta de complimento nos hago de cargo. Y para que conste lo firmamos en el puerto de Monterey a 27 de Sbrē de 1846.

(Signed) BENITO DIAZ.

(Signed) J. DE CASTANEDA.

(Endorsed)

No. 754.

Thomas O. Larkin.

⁞ of Orchard of Santa Clara.

Exhibit No. 4.

Filed in office July 25, 1854.

GEO. FISHER,
Sec'y.

Recorded in Rec of Evid vol 18 page 594, 595.

DEPOSITION OF BENITO DIAZ IN SPANISH.

Preg. 3.—Cuando fué escrito. Si se puede Vd acordar, y si se acuerda diga cuales son los circumstancias que le hacen a Vd acordarse de la fecha con tanta precision.

Res. 3.—No me acuerdo de la fecha en que se escribio.

Preg. 4.—En que año, o en que año poco mas o menos se escribio.

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Res. 4.—Me acuerdo haberlo escrito pero no me acuerdo en que año.

Preg. 5.—Acuerdese Vd si puede de las circunstancias bajo las cuales se escribia; en que ocasion en que lugar a instancia de quien, quien estaba con Vd &c.

Res. 5.—Me acuerdo que lo escribi en Santa Clara, a mego del Padre Real el me digo que le Secaia una copia de un documento que el tenia en la mano y yo creo que es esta misma es lo que escribi. Habian dos personas alli uno era Juan Castañeda y otro el llamo de la mision.

Preg. 6.—Vivia Vd en la mision entonces, y si no que hacia Vd alli entonces, y que hacia Castañeda alli.

Res. 6.—Habiamos venido a un negocio yo y Castañeda, con el Padre Real, habiamos venido a solicitar posecion de la puerta de Santa Clara.

Preg. 7.—De donde vinieron Vds, cuando vinieron a solicitar possesion de la puerta del Pardro Real? adonde habian estado?

Resp. 7.—Venimos de Monterey alli habiamos estado.

Preg. 8.—Y a Monterey de donde vinieron, adondone habian estado.

Res. 8.—Habiamos estado en Monterey; no habiamos venido de ninguna parte.

Preg. 9.—Cuanto tiempo pennanecieron Vds en Monterey antes de salir para Santa Clara para solicitar possecion de ese huerta.

Res. 9.—Ya vivia en Monterey y Castañeda en esa vez estaba radicado alli.

Preg. 10.—Se acuerda Vd de algo tocante a la retirada del Genl. Castro de por aca ariba para el sur cuando los Americanos invadieron el pais.

Res. 10.—Si me acuerdo.

Preg. 11.—Se acuerda Vd de algunos de los que se retivaron con el y si se acuerda á Vd los nombres de aquellos de quienes se puede Vd acordar.

Res. 11.—Me acuerdo del Sōr Alvarado, Antonio Maria Pico un tal Pinto y la mayor parte del pueblo.

Preg. 12.—Como fue con Vd y Castañeda Vds tambien se fueron o quedaron.

Res. 12.—Cuando tomaron Monterey Yo estaba alli y a las 3 o 4 dias despues me uni con la division que iba con Castro y que estaba en el llamo de Monterey, y encontre a Castañeda alli, iba el tambien con con la division de Castro.

Preg. 13.—Despues de haberse Vd unido con el Genl. Castro en el llano de Monterey para donde se fué Vd.

Res. 13.—Para "Los Angeles."

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Preg. 14.—Cuanto tiempo se quedo Vd por el sur de la California antes de volverse a Monterey.

Res. 14.—Un mes mas ó menos.

Preg. 15.—Se volvio Vd a Monterey antes que los Americanos tomaron Los Angeles la primera vez o despues.

Res. 15.—Sali la noche antes que lo tomaron la primera vez.

Preg. 16.—Quien vino con Vd.

Res. 16.—Vinieron varios, me acuerdo de Fernandez, Chaboya, Antonio Maria Pico y muchos otros.

Preg. 17.—Juan Castañeda fue uno de ellos.

Res. 17.—No.

Preg. 18.—Cuanto tiempo despues poco mas o menos fué cuando Vd vio a Juan Castañeda en Monterey.

Res. 18.—Tres o cuatro meses despues.

Preg. 19.—Fue despues que Vd vio a Juan Castañeda en Monterey en esa ocasion que Vd y el fueron a Santa Clara para solicitar posesion de la huerta al padre Real? Quien decir fue antes o despues de la vuelta de Castañeda del sur.

Res. 19.—Fue despues de la vuelta de Castañeda del sur.

Preg. 20.—Cuanto tiempo despues fué segun puede Vd acordarse ahora.

Res. 20.—Fus cinco o seis meses despues.

Preg. 21.—En esa visita de Vd y Castañeda fué cuando Vd escribio el papel de que se ha hablado en su testimonio o fue en alguna otra ocasion.

Res. 21.—Esa vez fué.

Preg. 22.—Se acuerda Vd de alguna ocurrencia que tuvo lugar al tiempo que Vd escribio el papel que le hace acordarse del hecho de haberlo Vd escrito ese papel.

Res. 22.—Me acuerdo solamente que el Padre Real me dictaba con un papel y que estaba alli Castañeda tambien.

Preg. 23.—Vea Vd el papel otra vez vea la firma del papel vea el decreto que tiene el papel en la margen y diga si la dicha firma y el dicho decreto en el margen estuvieron en el papel cuando Vd lo escribio, o si se pusieron despues en su presencia o si sabe Vd algo tocante a ellos.

Res. 23.—No se nada tocante a ellos, no habia firma ni decreto en el cuando yo lo escrivi. Luego que acabe de escribirlo lo tomo el Padre Real y lo guardo.

Preg. 24.—Vea Vd los otros tres instrumentos contenidos en dicho Documento es decir el Documento presentado por S. O. Houghton y diga si tiene algun conocimiento tocante a la letra de ellos, y si tiene que es? Y diga si sabe algo tocante a la escritura o preparacion de ellos y si sabe, que es lo que sabe?

Res. 24.—La primera representacion de Castillero conosco que esta

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escrito en la letra de Castañeda no conosco la letra de los otros dos instrumentos. Ne se nada tocante a la escritura o preparacion de ninguno ellos.

Preg. 26.—Quien es el posée ahora el derecho de Vds. a en esa huerta bajo el cual quisieron obtener possecion.

Res. 26.—Charley Clayton es el que lo poseé.

Preg. 27.—Cuando algunos dias despues que los Americanos tomaron Monterey se unio Vd con el Genl. Castro en el llano de Monterey como ha dicho Vd. en su testimonio, fue esa la primera vez que Vd se unio con el durante esa Campaña contra los Americanos.

Res. 27.—No fue esa la primera vez.

Preg. 28.—Cuando y en que lugar habia estado Vd con el antes durante esa Campaña y cuando y en que lugar lo dejo Vd a el.

Res. 28.—Habia estado con el antes en Santa Clara y en la Contra Costa; lo dege en Santa Clara tres o cuatro dias despues que volvimos de la Contra Costa y me fue para Monterey.

Preg. 29.—Sabe Vd en que dias estuvo Vd en Contra Costa con el Genl. Castro y en que dia se volvieron a Santa Clara.

Res. 29.—No me puedo acordar.

Preg. 30.—Cuantos dias antes que los Americanos, tomaron Monterey fue cuando Vd dejo el Genl. Castro en Santa Clara.

Res. 30.—Yo me acuerdo que sali de Santa Clara el dia 4 de Julio y los Americanos tomaron Monterey el dia 7 de Julio.

Preg. 31.—Mientras que estuvo Vd en Contra Costa o en Santa Clara en el tiempo ultimamente mencionado Escribio Vd o no algun papel tocante a esta mina a mego del Genl. Castro o del Padre Real o de alguna otra persona, o por su propia voluntad.

Res. 31.—No. Ninguno.

Preg. 32.—No esta muerto Castañeda ahora.

Res. 32.—Si esta muerto.

Cross-Examination.

Preg. 1.—Despues que Vd copio el Documento que le enseño el Padre Real cuando volvio Vd a ver la copia que Vd saco?

Res. 1—Lo vi aqui en este cuarto hace como quince dias.

Preg. 2.—Quien estuvo con Vd cuando lo vio? vino Vd aqui para verlo; y si para eso vino, que le trajo a Vd aca.

Res. 2.—Los Sōres Cambuston y Laurencel estuvieron con migo cuando lo vi. Vine a verlo porque el Sor Laurencel me digo que viniese aqui para ver si yo conocia la letra de algunos papeles que existian aqui.

Preg. 3.—No estuvieron otras personas con Vd en ese tiempo o en esa ocasion.

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Res. 8.—Habian varias otras personas alli viendo el documento y entre ellos estuvo el Sōr.

Preg. 4.—En segunda cuando volvio Vd a ver el dicho documento.

Res. 4.—Hace cinco o seis dias que lo vi aqui en este otro cuatro.

Preg. 5.—A mego de quien vino Vd a examinarlo por segunda vez y quien estuvo presente cuando hizo el segundo examen el.

Res. 5.—A mego del Sōr Laurencel vine la segunda vez. Estuvieron presentes el Sōr Laurencel y estos dos Sōres.

Preg. 6.—Despues cuando examino ese documento y a mego de quien.

Res. 6.—No lo he vuelto a ver hasta ayer cuando lo vi aqui.

Preg. 7.—Tiene Vd alguna residencia permanente en algun lugar como gana Vd la vida.

Res. 7.—Tengo una residencia permanente y gano la vida trabajando.

Preg. 8.—En donde vive Vd y que clase de trabajo hace Vd para ganar la vida.

Res. 8.—Vino en Monterey, alli tengo mi casa, tengo una parte de un Rancho y alli tengo otra casa y en el mismo Rancho estoy cultivando una huerta.

Preg. 9.—Como se llama ese Rancho y quienes son los dueños de las otras partes de el?

Res. 9.—Se llama "El Piojo" los hermanos de mi muger son los dueños de las otras partes de el.

Preg. 10.—Cuanto tiempo hace que esta Vd en San Francisco esta vez.

Res. 10.—Como tres semanas mas o menos.

Preg. 11.—En que se ha ocupado Vd aqui.

Res. 11.—Vine a arreglar un negocio con el Sōr Alvarado.

Preg. 12.—Quien le dijo a Vd primero que habia un documento que se estaba usando en esta causa, en su letra de Vd.

Res. 12.—Nadie me lo digo. No supe que habia uno hasta que lo vi.

Preg. 13.—Que le digo a Vd el Sōr Laurencel cuando le digo que viniese Vd a examinarlo diga todo lo que el le digo a Vd en esa ocasion.

Res. 13.—Vino el y me digo que le hiciese el favor de venir a ver si conocia yo las letras y venimos, Cambuston y yo. Yo reconosi la de Castañeda y la mina pero dige que conocia solamente la de Castañeda. Despues a los 3 o 4 dias me fui para San José y volvi aqui otra vez; y me volvio a mandar llamar el Sōr Laurencel me parece que fue el viernes; y me pregunto si era verdad que era mi letra esa, y me hizo otras varias preguntas, y me digo que estaba bueno que me agradecia mucho. Y el sabado el Marshal me llevo una subpœna.

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Preg. 14.—El Sõr Laurencel le hablo a Vd en Español o converso con Vd por medio de un interprete.

Res. 14.—Me hablo en Español.

Preg. 15.—Cuales fueron las otras preguntas que le hizo a Vd el Sõr Laurenzel en esa ocasion.

Res. 15.—Me pregunto que cuando habia escrito yo ese documento, adonde y en presencia de quien, y varias otras que no tengo presente, casi las mismas que me hacieron ayer.

Preg. 16.—Desques del primer examen que hizo Vd de este documento y antes de la conversacion que tuvo Vd con el Sõr Laurencel a la cual se refiere. Vd en su ultima respuesta habia Vd tenido alguna conversacion con cualquiera persona tocante a ese documento y si tuvo dé Vd los nombres de todas las personas con quines tuvo Vd tales conversaciones y diga lo que Vd les digo a ellos y lo que ellos le digeron a Vd tocante a el.

Res. 16.—Tuve conversacion con Fernandez, con Antonio Maria Pico, con un tal Santiago Crane; Fernandez conocia mi letra y me pregunto si efectivamente yo lo habia escrito y yo le conteste que si que lo habia escrito Antonio Maria Pico y Santiago Crane estaban presentes cuando Fernandez me hizo estos preguntos. Despues Don Antonio Maria Pico me digo que iba a hacer porque yo diera mi testimonio y yo le conteste que me hiciera el favor de no mes clarme en eso porque tenia que irme pronto.

Preg. 17.—En cuantas ocasiones le pidio Vd al Padre Real posecion de la Huerta de Santa Clara.

Res. 17.—En dos ocasiones.

Preg. 18.—La fecha de la primera.

Res. 18.—No me acuerdo de la fecha pero fue antes que nosotros en persona fuimos a pedirlo, fué por medio de Don Antonio Osio.

Preg. 19.—Diga Vd las féchas lo mejor aue Vd puede recordar; cuando daba Vd su testimonio en favor del actor en esta causa parecia Vd tener una memoria muy buena para fechas, tenga Vd la bondad de ejacerlo ahora un poco.

Res. 19.—Si yo me acuerdo lo diré péro despues de 10 o 11 años es dificil acordarse de la fecha. Me acuerdo que mande a Osio la primera vez pero no puedo acordarme de la fecha. No me acuerdo de la fecha de la segunda vez, pero ahora recuerdo se puede saber la fecha por los Periodicos porque en ellas se dio cuenta de un choque que tuve con el Padre Real tocante a la posecion de la huerta.

Preg. 20.—Que Periodico.

Res. 20.—El primer Periodico que hubo aqui me parece. Me parece que el Redactone era ese hombre muy grande que llamaban semple o simple.

Preg. 21.—La primera aplicacion que hizo Vd al Padre Real para la posecion de esta huerta fué para al sur con el Genl. Castro.

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Res. 21.—Despues que venimos del sur. Porque cuando nosotros venimos del sur trajimos los titulos para la huerta de Santa Clara.

Preg. 22.—Tiene Vd ahora algun interes en la huerta de Santa Clara bajo el titulo de que acaba de hablar o bajo de cualesquiera otro titulo.

Res. 22.—Ningun interes tengo.

Preg. 23.—Vendio Vd su interes en dicha huarta, bajo el titulo de que ha hablado y si lo vendio, a quien lo vendio, porque precio y cuando.

Res. 33.—Lo vendi a Charley Clayton en el año '49 o '50 pero no me acuerdo por cuanto.

Preg. 24.—Recuerde Vd si puede por cuanto.

Res. 24.—De 1200 á 1600 pesos.

Preg. 25.—En donde se escribio y firmo ese Titulo, por quien fue escrito y firmado y en donde y cuando. Querro decir su titulo para la huerta de Santa Clara.

Res. 25.—Fue escrito por Juan Castañeda y firmado por Pio Pico fue escrito y firmano en Los Angeles. No se cuando.

Preg. 26.—Se acuerda Vd de la fecha de el.

Res. 26.—En los ultimos dias de Junio '46.

Preg. 27.—Que le dio Vd al Gobierno por esa huerta.

Res. 27.—Si me es permitido hare una refleccion. Yo he prestado juramento para decir la verdad en la Causa de Andres Castillero, pero Ya veo que me esta examinando sobre otra causa.

Preg. 28.—Repito la pregunta. Tenga Vd la bondad de contestarla.

Res. 28.—Nada le di.

Preg. 29.—La huerta fue concedida a Vd solo ó a Vd con otros y si con otros, quienes?

Res. 29.—Fue concedida a mi a Juan Castañeda y a Luis Arenas.

Preg. 30.—Segun los terminos de la concesion fue donacion o venta.

Res. 30.—Me parece que fue venta.

Preg. 31.—Que se Castañeda ni Arenas le pagaron nada el Gobierno por la huerta bajo esa concesion.

Res. 31.—Creo que si le pagaron. Segun lo que ellos me digeron le pagaron Reses y semillas y un poco dinero.

Preg. 33.—Cuantas Reses, cuanta semilla y cuanto dinero y cuando lo pagaron.

Res. 33.—No si la cantidad ni cuando lo pagaron.

Preg. 34.—Tomaron recibo del Gobierno o algun otro empleado publico por lo que pagaron.

Res. 34.—Si habia recibo.

Preg. 35.—En letra de quien estaba ese recibo y pero quien estaba firmado.

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Res. 35.—Estaba firmado por Pio Pico el Gobernador. Me parece que estaba en letra de Castañeda pero no estoy seguro.

Preg. 36.—Que fecha tenia el recibo.

Res. 36.—Junio '46 creo que a fines del mes, no estoy seguro porque lo vi una vez no mas.

Preg. 37.—Como sabe Vd que Castañeda escribio esa concesion.

Res. 37.—Porque yo lo vi escribir.

Preg. 38.—En que case en Los Angeles se escribia.

Res. 38.—En casa de Luis Arenas.

Preg. 39.—Estuvo Castañeda en Los Angeles en el mes de Junio del año 1846.

Res. 39.—No. No estaba alli.

Preg. 40.—Estuvo Pio Pico en Los Angeles en el mes de Junio de año '46.

Res. 40.—No sé. Yo no estuvo alli en Junio '46.

Preg. 41.—Vd vio a Pío Pico firmar esa concesion.

Res. 41.—No.

Preg. 42.—En que mes escribio Castañeda esa concesion.

Res. 42.—En Julio o Agosto '46.

Preg. 43.—Es este indivídio nombrado Crane con quien tuvo Vd la conversacion mencionada en su respuesta No 16, an este ultimo examen, la misma persona a quien dijo V bajo juramento cuando Companero Vd como testigo en favor de los Estados Unidos ante la comision de Terrenos en la cusa de Redmond vs. Clayton reclamando la huerta de Santa Clara que Vd habia dicho muchas mentiras ?

Preg. 44.—Companeio Vd como testigo en favor de los Estados Unidos delante la Comision de Terrenos de los E. U. en Diciembre de 1854 en lá causa de J. W. Redmond y otros reclamando la huerta de Santa Clara, y se tomo su deposicion en esa causa.

Res. 44.—Si.

Preg. 45.—Vea Vd la prejunta No 13 y su respuesta a ella en el contra Examen como ee halla escrita en su deposicion tomada ante la comision de Terrenos el dia 28 de Diciembre de 1854 en dicha causa y depositado en la oficina de dicha comision la cual pregunta y respuesta se hallan en las palabras siguientes.

Pregunta No. 13.

Ha tenido Vd alguna conversacion con Santiago C. Crane, en la ciudad de San Francisco tocante al juramento que hizo Vd el dio 14 de Diciembre de 1854 ante esta comision o tocante en esta causa y si tuvo, cuando ocurrio esa conversacion y que digo Vd tocante al dinero que se la debia pagar a Vd. porque diese Vd testimonio contra lo que reclaman los actores en esta causa.

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Respuesta.

He tenido conversaciones con el dicho Crane tocante a el dicho juramento Crane me propuso que el daria su testimonio en esta causa y me pregunto cuanto pagaria el Padre Roble. Yo le dige que no sabia que podia ir a ver el Padre y arreglado el mismo Crane me digo que no el habia podido arreglado con el Padro.

Yo y Crane hemos tenido varias conversaciones en las cuales ambos hemos hecho falsas representaciones uno a otro para engañar uno a otro.

La conversacion que yo tuve con Crane tocante al dicho juramento tuvo lugar en el St. Francis Hotel en esta ciudad unos 3 o 4 dias despues que yo hizo dicho juramento.

Con referencia a lo que yo le dige a Crane tocante al dinero que yo debia recibir por testificar contra lo que se reclama en esta causa. Yo le he dicho a Crane muchas mentiras.

Vea Vd tambien su respuesta a la pregunta No. 15, en el contra examin en dicha deposicion la cual pregunta y respuesta se hallen en las palatras siguientes.

Pregunta No. 15.

Vd nombró alguna vez la suma de $2000 00 en la conversacion que dice Vd que tuvo con el como sumo que se le dibia pagar a Vd directamente o condicionalmente por que diese Vd testimonio contra lo que se reclama en esta causa.

Respuesta.

Yo le hé mencionado a el $1000, $2000, $3000 y $4000 en diferentes ocasiones como sumas que yo debo recibir por dar mi testimonio contra lo que se reclama en esta causa. Era falso pero yo se lo dige para deshacomre de el.

Crane me dijo que yo habia hecho mal negocio en ponerme del lado de los Padres; que si me hubiese puesto al lado de el me habia pocurado $4000 o $5000 de los Abogados.

Y diga si se le hizo a Vd dichas preguntas, y si esas respuestas se hicieron a dichas preguntas, y si el tal Crane que esta mencionados en dichas preguntas y respuestas es el individuo de ese nombre con el cual como ha dicho Vd en su respuesta No. 16 en el contra examen en esta deposicion, converso Vd tocante a esta peticion de Castro escrito por Vd a mego del Padre Real.

Res. 45.—Yo no soy Abogado y no se si debo contestar a esta pregunta, pero me parece que no es necesarie hacerme esta pregunta por-

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que los archivos son publicos, y yo estoy aqui para dar me testimonio en otra y diferente causa.

Preg. 46.—Repito la pregunta y exigo que Vd la conteste.

Res. 46.—En cuanta a Crane es el mismo de quien he hablado en esta deposicion.

Preg. 47.—En donde estaba Vd cuando el Padre Real le enseño el papel que le digo que copiase Vd.

Res. 47.—El Padre Real no me enseño ningun papel. El Padre Real estaba en su cuarto y me estaba dictando con un papel en la mano pero you no he visto el papel.

Preg. 48.—En donde tuvo lugar eso.

Res. 48.—En la mision de Santa Clara.

Preg. 49.—En que año.

Res. 49.—Ya he dicho varias veces que no me acuerdo que año.

Preg. 50.—No tiene Vd alguna idea en que año fue.

Res. 50.—Idea si tengo pero no tengo seguridad.

Preg. 51.—Que idea tiene Vd sobre eso.

Res. 51.—Que fue a finis de '46 en el año '47.

Preg. 52.—Quian estuvo presente cuando el Padre Real le digo a Vd que haciese Vd copia de ese instrumento.

Res. 52.—Juan Castañeda y el que era llavero de la mision.

Preg. 53.—Quien era el llavero de la mision; era Indio o Mexicano " Esta vivo.

Res. 53.—Era un tal Gutierrez. No se si era Mexicano o Español no se si estava vivo.

Preg. 54.—Sabe Vd en donde esta.

Res. 54.—No.

Preg. 55.—En letra de quien estaba en instrumento que el Padre Real le dijo a Vd que copiase.

Res. 55.—Ya he dicho que no lo he visto.

Preg. 56.—Como sabe Vd que el Padre Real tenia en sus manos un instrumento escrito si Vd no lo vio.

Res. 56.—Porque vi un papel en sus manos y el me dictaba.

Preg. 57.—Le pregunto Vd al Padre si el papel que el tenia en las manos estaba firmado por alguno.

Res. 57 —No.

Preg. 58.—Le pregunto Vd al Padre porque en el mes de Diciembre del año '46 o a principio del año '47 el le decia a Vd que copiase un papel la fecha del cual era 27 de Junio '46.

Res. 58.—No; porque como era negocio que no me importaba yo escribia lo que me decia.

Preg. 59.—Quien estuvo presente cuando le pedio Vd al Padre Real posesion de la huerta.

Res. 59.—Castañeda yo y el Padre.

Preg. 60.—Nadie mas.

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Res. 60.—Cuando le hablamos sobre ese negocio no habia nadie mas.

Preg. 61.—Que derecho tenia Vd para pedir al Padre Real posecion de la huerta de Santa Clara que razon le dio Vd a el por haber lo pedido.

Res. 61.—El titulo que le presentamos.

Preg. 62.—Le enseñaron Vds su titulo cuando le pidieron la huerta.

Res. 62.—Una copia le enseñamos porque Don Antonio Osio habia pedido el original.

Preg. 63.—En donde esta Don Antonio Osio.

Res. 63.—En la baja California.

Preg. 64.—La copia que Vds le enseñaron fue copia exacta de la original.

Res. 64.—Si.

Preg. 65.—Tuvo Vd algun choque con el Padre Real tocante a ese asiento.

Res. 65.—Si.

Preg. 66.—Fue despues o antes que Vd hizo esta copia que tuvo Vd el choque con el.

Res. 66.—Despues.

Preg. 67.—Cuando Vd pedio la posecion al Padre Real le dijo Vd a el que anique su titulo de Vd tenia fecha de fines de Junio del año '46 no se habia hecho en realidad hasta fines de Julio o principio de Agosto de ese año que Vd habia visto a Castañeda escribir el documento de titulo en Los Angeles a fines de Julio o a principio de Agosto 1846 despues de su llegada alli en la espedicion del Genl. José Castro, que no se empezo hasta el 11 o 12 de Julio 1846 ?

Res. 67.—No le dige tal cosa porque yo ignoraba que tuniese ese defecto.

Preg. 68.—De quo defecto habla Vd.

Res. 68.—De estar ante fechado.

Preg. 69.—Descubrio Vd el defecto de que estaba ante fechado, antes de vender Vd su interes en ese titulo o despues.

Res. 69.—Despues.

Preg. 70.—Cuando vio Vd estos documentos en compañia del Sõr Laurencel y reconocio Vd a primera vista su letra de Vd en el Documento que dice Vd que copio para el Padre Real y tambien la letra de Castañeda en la primera representacion de Castillero porque dijo Vd que reconocia solamente la letra de Castañeda porque no dijo Vd al Sõr Laurencel y a los otros Señores que estuvieron presentes cuando Vd estuvo examinando estos documentos que tambien reconocia Vd su propria letra ; Se estaba Vd reservando para venderse a el que le havia la mejor oferta ; ha prometido el Sõr Laurencel pagarle a Vd directa o indirectamente, algo por su testimonio en esta causa en favor de los E. U. y si ha prometido cuanto ?

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Res. 70.—La primera vez que vimos los documentos no quize decir que era me letra porque me repugna dar testimonio y si no hubiera sido, por undo de los testigos que conocio mi letra ya nunca hubiera dicho que era mia. Tocante al insulto que me hace de que me estaba reservando el mejor postor no se que motivo tiene para dicirlo. El Sōr Laurencel quejandome yo con el de lo trampa que habian puesto y que no tenia modo de cubrio mis gastos con lo que el Gobierno da para gastos, el me prometio que hiciera mi cuenta, y lo que fataria despues de pagado por el Gobierno el lo cubriria.

Preg. 71.—Existen relaciones amistosas entre Vd y Santiago Crane de quien ha hablado Vd se ha visto Vd con el muchas veses ultimamente. En donde vive el. Ha estado el en San Francisco en el mes pasado.

Res. 71.—Somos coviedos de mucho tiempo pero amistad estruba no tenemos, casi todos los dias lo veo. El tiene su resedencia en San Rafael creo que ha estado el aqui en el mes pasado.

Preg. 72.—Cuando vio Vd primero este documento que copia, como dice Vd que tiene idea que hizo, a fines del año '46 o en el año '47 quiero decir, cuando Vd lo examino primero a mego del Sōr Laurencel viendolo firmado por José Castro, viendo sobre el un decreto en el margen fue firmado por Pacheco con su rubrica y su nombre y viendo que este papel tiene fecha Junio 27 del año 1846 consideraba Vd que era honrado suprimir el conocimiento de su letra en este papel y todo lo demas que Vd sabia tocante a el que tendria tendencia a probar que era falso y ante fechado con el objeto de entar el trabajo que le causaria el ser testigo en esta causa en favor de los E. U.

Res. 72.—La primera vez que yo lo vi no vi la fecha. La segunda vez fue cuando vi la fecha.

Preg. 73.—Cuantos dias se pasaron entre la primera y segunda vez que Vd examino este documento.

Res. 73.—Como 15 dias mas o menos.

Preg. 74.—A quien dijo Vd primero que este documento estaba antefechada.

Res. 74.—A nadie hé dicho que esta antefechado.

Preg. 75.—A quien dijo Vd primero que este documento fue escrito por Vd algun tiempo despues de la fecha que esta puesto en el mismo documento.

Res. 75.—A nadie he dicho semejante cosa.

Preg. 76.—Cuando examino Vd primero este documento lo leyo?

Res. 76.—No.

Preg. 77.—Vio Vd entonces todo el documento vio Vd la forma que tenia.

Res. 77.—No. Luego no reconosi mi letra me retire para que no me hicieran preguntas.

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Preg. 78.—No volvio Vd la pagina o estuvo Vd satisfecho con una mirada a la primera pagina.

Res. 78.—No. Luego que vi mi letra me retire.

Preg. 79.—Vd ha dicho que habia venido para examinar el documento con el Sōr Laurencel en esa ocasion; porque no lo examino Vd; porque no lo examino suficiente para saber el contenido de el; porque no examino Vd las firmas; porque no miro Vd al decreto en el margen y a la firma de el; como no miro Vd a la fecha si Vd se tomo el trabajo de venir hasta aqui para examinar ese documento; no es al yo estraño que Vd se contento con una mirada a la primera pagina. Nadie le digo a Vd que lo examinase con mas cuidado o mas a menudo.

Res. 79.—Yo no he venido aqui espresamente a examinar el papel, cerca del cuarto del Sōr Della Torre el Sōr Laurencel nos convidaron a mi y a Cambuston para ver si conosiamos las letras de un documento y la primera que nos enseño fue la de Castañeda y despues volvieron a la primera a ver si la conocimos entonces se quedaron todos alli y yo luego que vi mi letra me fue; no quize que me hicieran mas prejuntas nadie me dijo que lo examinase mas a menudo.

Preg. 80.—El caballero que le invito Vd adentro del cuarto para examinar las letras, como Vd ha dicho no le pregunto a Vd de quien creia Vd que eran las letras de esos documentos.

Res. 80.—Me presento primero las de Castañeda y yo no di lugar a mas.

Preg. 81.—Repite la pregunta No. 45. Tengo Vd la bondad de contestar a ella plenamente.

Res. 81.—Tocante a las mencionadas preguntas y respuesta creo que son las preguntas que me hizieron y las respuestas que yo di a no ser algun equivoco o mala interpretacion porque no puedo acordarme exactamente de ellas despues de tanto tiempo. Santiago Crane es el mismo a quien me reficio en mi dicha respuesta No. 16.

Preg. 82.—La deposicion en la cual dio Vd esas respuestas a esas preguntas fue hecha bajo juramento.

Res. 82.—Si.

Preg. 83.—Segun lo que Vd ahora recuerda de la materia a que se refieren sus respuestas a las dichas preguntas tiene Vd alguna causa o razon para dudar que sus respuestas a las dichas preguntas como las dio Vd cuando se tomo esa deposicion estan correctamente puestas como se hallan escritas en la dicha pregunta No. 45.

Res. 83.—Puede ser que sea exacta esa deposicion pero no me acuerdo exactamente de las respuestas que di entonces.

Preg. 84.—En su respuesta No. 80 en su contra examen dice Vd el Sōr Laurencel le enseño a Vd primero el Documento que llaman "The Houghton Document," y que le enseño la letra de Castañeda en el dicho Document y que no dio Vd lugar a mas no fue el despues

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a buscarle a Vd y le pregunto que si la peticion de Castro estaba en su letra de Vd ?

Res. 84.—No.

Preg. 85.—Tuvo el Sōr Laurencel alguna conversacion con Vd tocante a esos papeles antes de haberse Vd ido a San José como digo Vd que hizo.

Res. 85.—No.

Preg. 86.—Tuvo Vd alguna conversacion con cualesquiera persona despues que Vd los vio primero y antes de irse Vd a San José, y si tuvo con quien.

Res. 86.—Tuve conversacion con Fernandez y con Antonio Maria Pico.

Preg. 87.—No tuvo Vd conversacion con el Sōr Crane ?

Res. 87.—Creo que no porque el no estuvo aqui en esos dias.

Preg. 88.—Dice Vd que durante ese intervalo no tuvo Vd ninguna conversacion con el Sōr Laurencel. No tuvo Vd alguna conversacion con alguno que le envio Vd el Sōr Laurencel, o quien sospechaba Vd que le fue enviado a Vd por el Sōr Laurencel tocante a eso.

Res. 88.—No. No tuve conversacion en ese intervalo con nadie enviado por el Sōr Laurencel ni con el mismo.

Preg. 89.—Durante su visita a San José se encontro Vd con Santiago Alexandro Forbes.

Res. 89.—No.

Preg. 90.—Quiero decir si vio Vd al Sōr Forbes, entre el tiempo en que salio y el tiempo en que volvio Vd a San Francisco en la ocasion de esa visita y no solamenti si lo vio Vd en San José.

Res. 90.—No lo vi desde que sali de San Francisco hasta que volvi.

Preg. 91.—Durante ese intervalo converso Vd con alguna persona tocante a estos papeles o a las cosas a que ellos se refieren ?

Res. 91.—Si. En el vapor platique con Fernandez, que iba abordo del vapor, en el camino para San José. No me acuerdo haber hablado con nadié mas.

Preg. 92.—Cuando Vd volvio a San Francisco con quien converso Vd primero tocante a esos papeles o a las cosas a que ellas refieren.

Res. 92.—El Sōr Laurencel fue el primero con quien hablé.

Preg. 93.—Cuantos dias se pasaron entre la primera vez que examino Vd estos papeles y su vuelta de San José.

Res. 93.—Ocho o diez dias mas o menos.

Preg. 94.—Vd le fue a buscar al Sōr Laurencel o el lé fué a buscar a Vd para la conversacion que tuvo Vd con el cuando estuvo Vd de vuelta de San José.

Res. 94.—Nos encontramos en la calle de Montgomery.

Preg. 95.—Se encontraron Vds en conformidad con arreglo anterior que tuvieron con ese fin.

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Res. 95.—No.

Preg. 96.—Entre el tiempo que examino Vd por primera vez este documento y el tiempo en que encontro Vd al Sōr Laurencel en la calle de Montgomery como esta dicho en su penultima respuesta habia Vd recibido del Sōr Laurencel o de alguna otra persona alguna comunicacion por escrito tocante a este documento á las cosas á las cuales el se refiere.

Res. 97.—No. No he recibido ninguna comunicacion.

Preg. 98. .Que le digo el Sōr Laurencel a Vd cuando lo encontro Vd en la calle de Montgomery.

Res. 98.—Entonces fue cuando el me convido que viniese a ver los papeles el dia siguiente.

Preg. 99.—Eso fue todo lo el le digo a Vd en esa ocasion.

Res. 99.—Despues de saludarnos fue todo lo que hablamos.

Preg. 100.—Esta Vd seguro que no le dijo mas Vd a el en esa ocasion ni el a Vd.

Res. 100.—Si estoy seguro.

Preg. 101.—Con quien tuvo Vd la primera conversacion despues de esta tocante a eso.

Res. 101.—Despues de ese conversacion no recuerdo haber conversado con nadie sobre eso.

Preg. 102.—Ha dicho Vd que el Sōr Laurencel le encontro a Vd en el corredor de esta casa y que le convido adentro de este cuarto para examinar los papeles en el documento que llaman "The Houghton Document," que en ese examen reconosio Vd que ese instrumento en ese documento estaba en la letra de Juan Castañeda y que tambien reconosio Vd que la peticion de Castro estaba en su letra de Vd que Vd le dijo el Sōr Laurencel que reconosia Vd solamente de letra de Castañeda y que si retiro de el principitamente para no darle lugar a que le preguntase el a Vd de quien era la letra de la peticion de Castro, que no tuvo Vd ninguna conversacion ni comunicacion con el Sōr Laurencel ni con ningun agente de el directa ni indirectamente tocante a esos documentos ni tocante a las cosas a que ellos se refieren hasta que se encontraron en la calle de Montgomery como Vd ha dicho. No es esto asi ?

Res. 102.—Si.

Preg. 103.—Ha dicho Vd que despues de su conversacion con el Sōr Laurencel en la calle de Montgomery se acuerda haber tenido conversacion alguna con cuales quiera persona tocante a estos documentos o a las cosas a que ellos se refieren. No es esto asi.

Res. 103.—Si.

Preg. 104.—Ha dicho Vd que su conversacion con el Sōr Laurencel en la calle de Montgomery no fue mas que saludarse y el convidarle a Vd que viniese el dia siguiente a examinar estos papeles. Que le contesto Vd al Sōr Laurencel.

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Res. 104.—Ques vendria a verlos.

Preg. 105.—Vino Vd y cuando?

Res. 105.—Vine el dia siguiente.

Preg. 106.—De donde vino Vd y con quien.

Res. 106.—Vine del California Hotel me parece que vine acompañado con Crane.

Preg. 107.—Que Crane.

Res. 107.—Santiago Crane.

Preg. 108.—Crane le acompañio a Vd hasta el cuarto que esta contigno a este y el tambien examino esos documentos.

Res. 108.—No vino el al cuarto ni examino los documentos.

Preg. 109.—En donde lo dejo Vd a Crane cuando entro Vd al cuarto para examinar los documentos. Conteste Vd con precision.

Res. 109.—No recuerdo si lo deje en la puesta de esta casa abajo o en la esquina de la calle.

Preg. 110.—A que distancia esta la esquina de la calle de la puerta de esta casa.

Res. 110.—Puede haber como 30 o 40 varas.

Preg. 111.—Bien pues Vd entro para examinar los papeles; diga todo lo que se hizo y se dijo en esa ocasion de ese examen.

Res. 111.—Ya he contestado eso.

Preg. 112.—No estoy satisfecho con su respuesta, repito la pregunta, conteste la Vd.

Res. 112.—Entre yo, y estaba el Sōr Randolph el Sōr Laurencel y creo que el Sōr que trajo el papel de San Jose. El Sōr Randolph le pidio a Sōr ——— este ultimo los papeles y se las dio al Sōr Laurencel y entonces el me las enseño uno por uno y me pregunto si efectivamente era mi letra y despues de varias preguntas que me hizo signio enseñandome el documento escrito por Castañeda y otra peticion que esta hecha alli por Castillero y me pregunto si conosia la letra y firma de Castillero y despues si conosia la del documento de posesion, conteste a las preguntas que me hizo y cuando vi que no me preguntaba mas trate de espedirme. Eso fué todo lo que paso.

Preg. 113.—Dice Vd que despues de haberle preguntado a Vd si cierto papel estaba efectivamente en su letra de Vd, el Sōr Laurencel le hizo varias otras preguntas, que le contesto. Vd cuando el le pregunto si ese documento estaba en su letra, y cuales fueron las varias otras preguntas que le hizo el Sōr Laurencel a Vd.

Res. 113.—Le conteste que era mi letra efectivamente. Me pregunto cuando lo habia escrito, adonde quenes estaba presentes, y varias otras preguntas que no recuerdo.

Preg. 114.—Adonde fue Vd cuando salio del cuarto.

Res. 114.—Me parece que fui a tomar café en la calle de Clay. Fui solo.

Preg. 115.—No le aguardo Crane a Vd.

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Res. 115.—No.

Preg. 116.—Cuando lo volvio Vd a ver a Crane.

Res. 116.—La noche del dia siguiente.

Preg. 117.—Esta Vd seguro que no lo vio en el inter.

Res. 117.—Si estoy. Porque lo buscaba para que me tradesjera el supoena.

Preg. 118.—Cuando Vd y Crane venieron juntos a esta casa en su ultima visita de examen tuvo Vd alguna conversacion con el tocante al objeto de su visita.

Res. 118.—Le dije que venia a ver los papeles es toda la conversacion que tuve con el.

Preg. 119.—Le dijo Vd a el que papèles venia Vd a ver.

Res. 119.—Si.

Preg. 120.—Que dijo el.

Ros. 120.—Me dijo que si venicia yo a ver los mismos que habia visto primero.

Preg. 121.—Que le dijo Vd a el.

Res. 121.—Que venia a ver los mismos papeles.

Preg. 122.—Crane le hizo a Vd algunas preguntas tocante a esos papeles alguna vez; antes o despues de esa ocasion.

Res. 122.—Cuando el oyo la conversacion que yo tenia con Fernandez me pregunto si era de veros mi letra y yo le conteste que parecia que si.

Preg. 123.—Nùnca despues tuvo Vd alguna conversacion con Crane.

Res. 123.—Tocante a los papeles no tuve ninguna.

Preg. 124.—Vd y Crane tuvieron alguna vez alguna conversacion tocante al Sõr Laurencel?

Res. 124.—Hemos tenido varias.

Preg. 125.—Los tuvieron Vds en el tiempo que Vd examino estos documentos o despues de eso.

Res. 125.—Despues de tener la subpoena hemos platicado bastante nunca antes tocante a el.

Preg. 126.—Le dijo Crane a Vd que el habia conversado con el Sõr Laurencel tocante a estos papeles o a esto de que se trato.

Res. 126.—No.

Preg. 127.—Este hombre Crane dio alguna vez su deposicion en la causa de Redmond, Clayton y otras para la huerta de Santa Clara ante la Comision de Terrenos de los E. U.

Res. 127.—No se.

Preg. 128.—Se acuerda Vd haber hecho juramente alguna en algun pleito que no creivia Vd a Santiago Crane bajo juramento.

Res. 128.—Me acuerdo haber jurado que no creiria a el en el testimonio que habia dado en ese asunto o una cosa asi.

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Preg. 129.—En donde estaba Vd en el mes de Mayo del año '46 diga todas los lugares en donde estaba.

Res. 129.—No puedo decir el lugar fixo en donde estaba.

Preg. 130.—En donde estuvo Vd en el mes de Junio del año '46 diga todos los lugares en donde estuvo.

Res. 130.—Aqui en San Francisco; en Santa Clara, y en la Contra Costa.

Preg. 131.—En donde tenia el Genl. Castro su cuartel General en el mes de Junio del año '46.

Res. 131.—En Santa Clara.

Preg. 132.—Cuando volvio Vd de Los Angeles a Monterey cuantos dias estuvo Vd en el carmino.

Res. 132.—No puedo acordarme pero tengo idea que puse unos 10 o 12 dias.

Preg. 133.—Cuantos dias estuvo Vd en el camino de los llanos de Monterey a Los Angeles cuando fue Vd en la espedicion de Castro.

Res. 133.—Estuvimos creo que como 10 o 12 dias tambien.

Preg. 134.—Cuantos dias estuvo Vd en Los Angeles.

Res. 134.—No me acuerdo pero se que sali de alli la noche antes que pusieron la bandera Americana ali. Eso fue cuando lo tomo el Comodore Stockton la primera vez.

Preg. 135.—Quien vino con Vd de Los Angeles.

Res. 135.—Varios me acuerdo de José Fernandez, un tal Chaboya; Pedro No. Antonio Maria Pico (Castañeda no vino) Bernadino Soto, Lazaro Soto, y no me acuerdo de mas, aunque habian mas.

Preg. 136.—Cuanto tiempo despues de su llegada de Vd a Monterey fue cuando llego alli Juan Castañeda.

Res. 136.—Tres o cuatro meses; me parece pero no estoy seguro.

Preg. 137.—Dice Vd que los diavios hablaron de un choque que tuvo Vd con el Padre Real tocante a esta huerta. Sabe Vd lo que dijeron los diavos sobre eso pero primero diga si puede de que naturaleza era ese choque.

Res. 137.—Fué sobre una carta que yo le escribi el Padre Real. No recuerdo lo que dijeron los diavos.

Preg. 138.—El Padre Real contesto a esa carta.

Res. 138.—Me parece que si.

Preg. 139.—En donde fué escrito su carta de Vd al Padre Real.

Res. 139.—En Monterey.

Preg. 140.—Esa carta fué escrita antes o despues que Vd escribio la peticion de Castro.

Res. 140.—Me parece que fué escrita despues. No puedo recordar cuanto tiempo despues; me parece que fue poco tiempo despues.

Preg. 141.—Fue un mes despues.

Res. 141.—No puedo hacer memoria.

Preg. 142.—Cuanto tiempo despues de su vuelta de Vd de Santa

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Clara a Monterey fué cuando Vd le escribio esta carta al Padre Real.

Res. 142.—No puedo hacer memoria.

Preg. 143.—Su titulo de Vd para la huerta tiene fecha del dia 30 de Junio del año '46 porque permitio Vd que tanto tiempo se pasara entre la fecha de su titulo y su pedimiento de la huerta.

Res. 143.—Porque cuando venimos de Los Angeles yo estuve como prisionero en Monterey. No podia salir de alli; tambien yo no tenia los titulos los tenia Castañeda.

Preg. 144.—Cuanto tiempo despues que Vd recibio sus titulos de Castañedas fue cuando Vd pidio posesion de la huerta que tuvo por resultado el choque de que ha hablado Vd.

Res. 144.—Poco tiempo despues que llego Castañeda y un dia que supimos que Don Antonio Osio venia a Santa Clara mandamos el titulo con el que para que solicitara en nuestro nombre la posesion el Padre nos contesto cuando volvio Osio despues de algun tiempo que no podia damos posesion por que alegaba tener mi titulo de los Indios y Don Antonio Osio nos digo que habia perdido nuestro titulo y poco tiempo despues de esto supimos que el Padre Real le habia dado posesion a Osio de la huerta bajo un titulo segun supimos despues; fabricado por el Padre Real, en una de las firmas en blanco que le habia dejado el Genl. Castro; ese fue el origin de nuestro choque; algun tiempo despues que mandamos el titulo con Osio fue cuando tuve el choque con el Padre de que hablaron los diarios. No puedo hacer memoria cuanto tiempo despues fué.

Preg. 145.—Cuanto tiempo despues que Vd le confio a Osio este encargo fue cuando Vd supo que el Padre Real habia puesto a Osio en posesion de la huerta bajo el titulo de que ha hablado Vd.

Res. 145.—No recuerdo; pero mi contestacion en los periodicos ha de decir algu de eso.

Preg. 146.—Fue antes o despues de la visita que hizo Vd personalmente a Santa Clara para hacer la demanda que tuvo por resultado la correspondencia que fué publicado en los diarios como ha dicho Vd.

Res. 146.—Fué despues de esa visita.

Preg. 147.—Vea Vd el documento que se le enseña a Vd, que pretende ser una concesion de Pio Pico a Benito Dias, de un pedazo de tierra conocido bajo el nombre de Punto de Lobos situado en el Puerto de San Francisco, el cual papel recive de los archivos del Surveyor General of the State of California, por medio de un empleado en dicha oficina siendo parte de los archivos de la Comision de Terrenos de los E. U. existiendo en esa oficina y Rotulado del modo siguiente No. 515: Joseph C. Palmer et als. Punto de Lobos, Doc. H. I. T. No. 1 annexed to dep of Benito Dias taken before Com. Harry I. Thornton. Filed in office April 2d, 1853. Geo. Fisher, Sec'y. A. No. 1, G. T. B. attached to deposition of Pio Pico July 5, 1854, taken before Commr. G. Thompson Burrill. Y diga si sabe de quien es la letra del

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dicho documento si conose las firmas que estan en el y si dichas firmas son verdaderas.

Res. 147.—La letra es mia y las firmas segun mi conocimiento son buenas.

Preg. 148.—Es este un documento verdadero y fué hecho en el tiempo que esta fechado.

Res. 148.—Yá he dado mi testimonio sobre eso.

Preg. 149.—En ese documento encuentra las palabras siguientes; "Dado en la ciudad de Los Angeles a veinte y cinco de Junio de mil ochocientos cuarenta y seis, en este papel comun por falta del sellado." No estan estas palabras en su letra de Vd y no fueron escritos por Vd al mismo tiempo que escribio Vd lo demas del cuerpo del instrumento.

Res. 149.—Si.

Preg. 150.—Ha dicho Vd en esta deposicion varias veces, en respuesta a las preguntas que se le han hecho a Vd que en el mes de Junio del año 1846, estuvo Vd en Santa Clara y Contra Costa y no en Los Angeles. Como puede ser eso viendo que las palabras tomadas de su concesion en la pregunta anterior pretenden haber sido escritos en la ciudad de Los Angeles en el dia 25 de Junio del año 1846.

Res. 150.—Ya hé dicho en estos deposiciones que hs dado porque fué fechado ese documento en Los Angeles habiendolo escrito en San Francisco.

Preg. 151.—Escribio Vd ese documento en San Francisco.

Res. 151.—Si.

Preg. 152.—Cuando.

Res. 152.—No me acuerdo.

Preg. 153.—El documento esta fechado el dia 25 de Junio del año '46, no dice el documento la verdad en ese particular.

Res. 153.—No se si dira la verdad; segun lo que dice mi testimonia que ya he dado en la causa de este titulo yo pienso que dira la verdad.

Preg. 154.—Este titulo fué escrito por Vd en Los Angeles el dia 25 de Junio del año 1846?

Res. 154.—No.

Preg. 155.—En donde fue escrito y cuando.

Res. 155.—Fué escrito en San Francisco como ya he dicho, en el mes de Junio del año '46; no me acuerdo en que dia del mes.

Preg. 156.—El documento esta en la letra de Vd, y esta en su presencia de Vd, Vd lo ha examinado, encuentra Vd la fecha escrito plenamente, y sin embargo dice Vd que no se acuerda del dia en que fué escrito, tiene Vd alguna razon para suponer que fué escrito en algun dia diferente del dia de su fecha?

Res. 156.—Fue escrito algunos dias antes del dia de su fecha.

Preg. 157.—Yo ya le he preguntado a Vd si el documento dice la verdad tocante a la fecha. Vd ha contestado. No se si dira la ver-

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dad segun lo que dice mi testimonio que ya he dado en la causa de este titulo yo pienso que dirá la verdad como puede Vd reconciliar esa respuesta con lo que ha dicho en su respuesta No. 156.

Res. 157.—Porque yo escribi ese titulo cinco o seis dias antes de la fecha que tiene y lo mande para Los Angeles y no se si lo firmaron exactamente el dia 25 o no.

Preg. 158.—Que derecho tenia Vd escribiendo en San Francisco en el mes de Junio del año 1846 un documento de titulo que debia ser firmado por el Gobernador de California en Los Angeles para ponerle la fecha y escribirlo enteramente en el dicho documento.

Res. 158.—El derecho que yo tenia fué que me escribio de Los Angeles el encargado que yo tenia alli diciendome que estaba el pais algo revuelto y que le mandara los papeles y informes apriesa y si posible era el titulo para que no mas lo firmaran.

Preg. 159.—Infirio Vd de la comunicacion de su encargado en Los Angeles que el pais estaba en un estado tan revuelto que el Gobernador de California y su secretario no tendrian tiempo para llenar un blanco en su titulo con una fecha y el nombre del lugar en donde fué executado?

Res. 159.—Yo no pense nada. Yo hize el titulo y lo mande.

Preg. 160.—Dice Vd que el titulo fué escrito por Vd unos tres o cuatro dias antes del dia de su fecha porque escojio Vd el dia 25 de Junio 1846 para la fecha de su titulo porque no le puso la fecha del dia en que lo escribio. El haber escojido Vd ese dia de todos los otros dias del año no demuestra que Vd penso sobre eso y que no fue fechado por casualidad.

Res. 160.—Puse esa fecha porque hize el calculo de los dias que tardaria el correo en llegar.

Preg. 161.—No fué esa conducta de Vd muy estraña. No consideraba Vd que seria un mal que el Gobernador y su secretario firmasen un documento importante en un dia diferente del de su fecha. No tenia Vd que el no llegar el titulo tan luego como el 26 de Junio o sus muchos que haceres o alguna otra circumstancia, impediria el Gobernador y su secretario de firmar el documento en el dia que Vd habia escogido para su fecha; y no penso Vd que si asi susediese que lo fecha que Vd habia escrito tan plenamente se tendria que borrar y que se tendria que poner la fecha verdadera y que tal cambio podria dar lugar a sospechas tocante a su titulo.

Res. 161.—Yo no considero que esa es una pregunta sino un cargo que se me hace. Yo en ese tiempo no pense en eso. Este cargo se le podia hacer mas bien a el Gobernador por haberlo firmado pero yo lo creo el titulo muy legal pues el Gobernador consintio en firmarlo.

Preg. 162.—Que se José Matias Moreno que firmo como secretario su titulo de Vd para el puerto de los Lobos y el nombre de quien esta puesta bajo la nota en estos palabras. "Queda tomada razon en el li-

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bro correspondiente," fue el mismo hombre que firmo como secretario su titulo de Vd para la huerta de Santa Clara y que firmo otra nota semejante en el titulo de Vd para la huerta de Santa Clara.

Res. 162.—Es el mismo.

Preg. 163.—Dice Vd que cuando escribio Vd ese titulo lo mando por el correo, quien era el que llevaba el correo, cuanto tiempo ponia ordinarimente en el correo en ir de San Francisco a Los Angeles.

Res. 163.—No me recuerdo quien llevaba el correo. El tiempo que ponian pare hacer el viaje dependia de la clase de correo era, el ordinario ponia 6 o 8 dias pero el extraordinario iba mas pronto cuando digo correo quiero decir la persona que llevaba las comunicaciones. No habian correos establecidos por el Gobierno en ese tiempo ni habia nadie que estimase constantamente en el empleo del Gobierno para llevar el correo.

Preg. 164.—Segun lo que yo entiendo Vd ha dicho que hizo dos esfueszos; y dos no mas; para obtener del Padre Real la posesion de la huerta de Santa Clara un pedimiento por medio de su agente Antonio Osio y el otro lo hicieron Vd y Castañeda personalmente en Santa Clara al Padre Real y que fue durante la visita que hizo Vd a Santa Clara con ese objeto cuando escribio Vd la peticion de Castro del cual ha hablado Vd en su testimonio; no es esto asi?

Res. 164.—Si.

Preg. 165.—No autoriso Vd a Thomas O. Larkin que tomarse el posesion de esa huerta.

Res. 165.—Si.

Preg. 166.—Larkin le pidio al Padre Real o alguna otra persona posesion de la huerta bajo esa autoridad.

Res. 166.—Yo se que el auduvo corriendo transcitos para tomar la posesion y despues el nos dijo que no podia tomarlo.

Preg. 167.—Larkin fué autorisado por Vd y Castañeda o por Vd solo.

Res. 167.—Fue autorisado por los dos.

Preg. 168.—Se dieron esa autoridad por escrito o verbalmente.

Res. 168.—Le hizimos una venta condicional de la huerta de Santa Clara.

Preg. 169.—Esa venta condicional fué por escrito y contenia ella la unica autoridad que le dieron al Sōr Larkin para tamar posesion de la huerta de Santa Clara.

Res. 169.—Fué por escrito, pero no me acuerdo de los pormerons de la vuelta.

Preg. 170.—Repito la pregunta No. 168 conteste la Vd.

Res. 170.—No me acuerdo si se lo dimos por escrito o verbalmente epro nostros le dimos autoridad para que tomara posesion de la huerta.

Preg. 171.—En donde estaba el Sōr Larkin cuando Vd y Castañe-

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da le dieron esa autoridad y en donde estaba cuando le hizieron esa venta condicional de que ha hablado Vd.

Res. 171.—En Monterey.

Preg. 172.—Cuanto tiempo despues de la vuelta de Castañeda de Los Angeles fué esto.

Res. 172.—No puedo fixar el tiempo pero pasó bastante tiempo.

Preg. 173.—Fué antes o despues que Vd pidieron posesion de la huerta por medio de Osio.

Res. 173.—Fué despues.

Preg. 174.—Cuanto tiempo despues.

Res. 174.—Tengo una idea no mas que seria dos o tres meses despues.

Preg. 175.—Dice Vd que Vd y Castañeda le hicieron una venta condicional de esta huerta al Sōr Larkin. No le hicieron despues una venta absoluta o sin condiciones al Sōr Larkin.

Res. 175.—La venta se la hizimos absoluta pero en un documento aparte estan las condiciones.

Preg. 176.—Esta venta absoluta al Sōr Larkin fué hecha antes o despues que Vds pidieron posesion de la huerta por medio de Osio.

Res. 176.—Fué despues.

Preg. 177.—Esta venta al Sōr Larkin fue hecha antes o despues de la visita que hizo Vd al Padre Real cuando escribio Vd la peticion de Castro.

Res. 177.—Fué antes y recuerdo que la visita hiziemos a instancias del mismo Larkin y tengo la idea que el mismo nos habilito para hacer el viage.

Preg. 178.—Ha dicho Vd que su venta condicional al Sōr Larkin fué hecha bastante tiempo despues de haber Vds pedido posesion de la huerta por medio de Osio; tambien ha dicho Vd que Osio perdio sus papeles de titulo originales.

Cuanto tiempo despues de la dicha perdida fué cuando los hallaron?

Res. 178.—No recuerdo al tiempo pero debo tener una carta que me escribia José Fernandez cuando el los hallo?

Preg. 179.—No tiene Vd alguna idea del tiempo, fue una, dos, tres o cuatro semanas; quieros sus mejores recuerdos sobre eso.

Res. 179.—No puedo recordarme pero por darle gusto dire que fueron tres, cuatro o cinco semanas.

Preg. 180.—Que hizo Vd con los papeles de titulo cuando los obtuvo de nuevo.

Res. 180.—Me parece que entonces fue cuando le hiziemos la venta a Larkin.

Preg. 181.—Que hizo Vd con los papeles.

Res. 181.—Luego que los recibi de Fernandez. Los entre que a Castañeda.

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Preg. 182.—En su respuesta No. 180 a cual se refiere Vd a su venta condicional o a su venta absoluta a Larkin.

Res. 182.—No hubo mas que una venta era con la condicion de que sé tomaba el posesion de la huerta nos pagaria el dinero y si no quedaria rudo todo. Estas condiciones fueron escritos en un documento a parte de la venta.

Preg. 183.—Este documento de venta y el instrumento que contenia las condiciones fueron escritos al mismo tiempo?

Res. 183.—Si.

Preg. 184.—Vea Vd el documento que se le enseña a Vd y diga si conose la letra?

Res. 184.—Si la conosco.

Preg. 185.—Conosé las firmas.

Res. 185.—Si.

Preg. 186.—De quienes son.

Res. 186.—Una es mi y la otra es de Juan Castañeda.

Preg. 187.—Qué fecha tiene ese instrumento.

Res. 187.—Setiembre 27 de '46.

Preg. 188.—De quien es la letra del cuerpo del instrumento.

Res. 188.—Es letra mia.

Preg. 189.—Vea Vd este documento y diga si conose la letra y las firmas.

Res. 189.—Si.

Preg. 190.—De quien es la letra del documento y de quien es son las firmas.

Res. 190.—La letra del documento es de Juan Castañeda y las firmas son la de el y la mia.

Preg. 191.—De quien es la letra de las palabras, "Monterey Sbrē 27 de 1846," en el primer documento que se le ha enseñado a Vd, y de quien es la letra de las palabras "y para que conste firmamos en el puerto de Monterey a 27 de Sēt. de 1846," en el ultimo documento que se le ha enseñado a Vd? Que sé estas palabras no se usaron con el fin de espresar el lugar en donde sé hizieron estos documentos y las fechas en que se hizieron.

Res. 191.—Las palabras mencionadas y que estan en el primer documento estan en mi letra del segundo documento estan en letra de Castañeda. Estas palabras se usaron para espresar el lugar en donde se hizo los documentos y las fechas en que se hizieron.

Preg. 192.—Que si estos documentos se hizieron en el lugar y al tiempo que ellos mismos demuestra.

Res. 192.—Si.

Preg. 193.—Que si el Castañeda que los ha firmado es el mismo uno Castañeda de quien ha hablado Vd en toda esta deposicion.

Res. 193.—Es el mismo.

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Preg. 194.—Castañeda firmo esos dos documentos en presencia de Vd.

Res. 194.—Si.

Preg. 195.—Ha dicho Vd que despues que recibio Vd el subpoena para que diese testimonio en esta causa busco a James Crane para que se le tradujese e lo encontro Vd, se lo tradujo el, y cuanto tiempo despues de haberlo Vd recibido.

Res. 195.—Lo encontre la misma tarde que recibi la subpoena y el me lo tradujo.

Preg. 196.—Vea Vd el documento que ahora se le enseña que parece ser su deposicion de Vd en favor de los actores en la causa de los E. U. contra Joseph C. Palmer y otros, No. 394 siendo apelacion de la Comision de Terrenos de los E. U. en la causa No. 515 en un registro de dicha comision, la cual deposicion parece haber sido empezado el 7 de Mayo de 1857, y haber sido jurado y firmado el 11 de Mayo de 1857 ante J. Edgar Grymes Comisionado Especial y vea Vd particularmente a las palabras siguientes en dicha deposicion. "Conosco bien al Sōr D. Santiago C. Crane es dudoso que el sea hombre de vercidad. Yo no lo creria a el bajo juramento," diga si Vd dio esta deposicion bajo juramento y si esa parte de el a la cual se le refiere, expresa exactamente el testimonio que Vd dio en esa ocasion.

Res. 196.—Me parece que no esta muy exacta, recuerdo que dige que no creiria su juramento en la causa ante dicha.

Preg. 197.—Quien fue el interprete en esa ocasion.

Res. 197.—Fue el mismo que escribia la deposicion el comisionado.

Preg. 198.—No digo Vd poco tiempo despues del primer examen que hizo Vd estos documentos a Antonie Maria Pico y José Fernandez a a uno de ellos en el St. Francis Hotel en esta ciudad que la peticion de Castro, este documento fue estrito por Vd antes de vise Vd para el Sur en la espedicion de Castro, que Vd ha mencionado.

Res. 198.—No. Ellos me preguntaron si yo habia escrito el documento y yo les dige que si, que creia que era mui bueno porque yo lo habia escrito en el cuarto del Padre Real. No mencionamos nada de la espedicion de Castro ni de haberme ido yo con el.

Preg. 199.—Vd dijo que cuando primero examino Vd estos documentos lo dijo Vd al Sōr Laurencel que reconocio Vd unicamente la letra de Castañeda y que Vd se retiro luego para que el Sōr Laurencel no tuviese lugar para hacerle a Vd preguntas tocante a su letra en la peticion de Castro y este porque no queria Vd ser testigo en la causa. Tambien ha dicho Vd que no tuvo comunicacion alguna con el Sōr Laurencel ni con ningun agente de el directamente hasta que le encontro a el en la calle de Montgomery cuando volvio Vd de San José, en la cual ocasion todo lo que ocurrio entre Vds fué un saludo y una invitacion del Sōr Laurencel a Vd que volviese Vd a examinar los mismos papeles el dia siguiente. Tambien ha dicho Vd que accepto

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la imitacion y examino los papeles por consiguiente y en el tal examen el Sõr Laurencel le hizo a Vd bastantes preguntas, a todos las cuales contesto Vd, de que contesto Vd, de que modo le quitaron a Vd la repugnacion que tenia de ser testigo en esta causa.

Res. 199.—Yo nunca creia ser testigo nunca dije al Sõr Laurencel en mis respuestas que me acordaba cuando lo habia hecho y por eso mismo crei que no me necesitaba. Yo si hubiera sabido que me iban a sorprender hubiera procurado evardirlo.

Res. 200.—Entonces parece que Vd no tuvo tanto cuidada cuando hizo el segundo examen como tuvo cuando hizo el primer examen y entonces no sospechaba Vd que el Sõr Laurencel deseaba su testimonio en esta causa: porque estuvo Vd tanto mas confiado cuando hizo el ultimo examen de los papeles que cuando hizo el primer examen. Y porque razon pensaba Vd que el tiempo en que Vd escribio la peticion de Castro era cosa de importancia para el Sõr Laurencel y que si el no podia probar con Vd que fue escrito en un dia diferente de el de su fecha, no tenia Vd que temer que le llamarian como testigo en esta causa ?

Res. 200.—Yo no sabia que era cosa de importanr,a para el. No estaba impuesto del asunto.

Preg. 201.—Es todo lo que tiene Vd que decir en respuesta a la pregunta anterior ?

Res. 201.—Como el Sõr Laurencel me hizo unas preguntas no mui claras yo le conteste y no sospechaba que me llamaria como testigo. No conocia nada del asunto.

Preg- 202.—Ya ha declarado Vd positivamente que Vd consideraba mientras que hacia el segundo examen de estos documentos que el Sõr Laurencel no necesitaria su testimonio porque todria no le habia dicho Vd cuando habia escrito la peticion de Castro y ahora declara Vd positivamente que al tiempo que hizo el segundo examen de los papeles no sabia Vd nada de este negocio; estas dos declaraciones son repugnantes una a otro; cual de los dos dice Vd ahora que es la verdadera.

Res. 202.—No entiendo la pregunta. No veo contradiccion en esas dos respuestas. Yo nunca pensaba que mi testimonió era importante.

Preg. 203.—Cuando fué la ultima vez que Vd vio el periodico que hablaba del choque que tuvo Vd con el Padre Real.

Res. 203.—Hace muchos años ne le he visto mas de uno o dos veses desde que se publicó.

Preg. 204.—Lo ha visto Vd un el año proximo pasado.

Res. 204.—No.

Preg. 207.—Durante ese tiempo alguno le ha dicho a Vd algo tocante a el.

Res. 205.—No.

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Preg. 206.—Diga Vd plenamente todo lo que recuerda de la publicacion en el periodico de que ha hablado Vd.

Res. 206.—Do lo que decia el periodico no recuerdo; pero tengo idea que hablaba sobre la posecion de la huerta.

Preg. 207.—Contenia esa publicacion una corta de Vd al Padre Real; y si asi fue, contenia tambien la respuesta del Padre a su carta de Vd. Ha dicho Vd en su contra examen que Vd contesto en los periodicos a la carta del Padre cuando Vd supo como le habian tradado a Vd el Padre y Osio cuando se hizo la contestacion de Vd?

Res. 207.—No recuerdo pero me parece que hay una carta de por medio de la publicacion. Carta mia al Padre Real. El puso primero una carta mia y yo despues puso mi contestacion segun recuerdo. El Padre Real sin duda puso algo con mi primera carta.

Preg. 208.—Se mencionó el nombre del Sõr Larkin en su carta de Vd al Padre Real que fue publicado?

Res. 208.—No recuerdo.

Direct Examination Resumed.

Preg. 4.—Uno de estos fué Secretario y el otro ayundante del Secretario y si asi fué cual?

Res. 4.—Juan Castañeda era el Secretario, y el otro era el Ayudante.

Preg. 5.—Estuvieron estas dos personas o alguno de ellos presentes en Santa Clara con el General Castro durante el dicho mes de Junio de 1846?

Res. 5.—Si estuvieron los dos.

Preg. 6.—Durante ese tiempo escribio Vd para el General Castro algun papel cuales queria.

Res. 6.—No recuerdo haber escrito.

Preg. 7.—Se acuerda Vd haberle servido de Secretario en cualesquier tiempo durante esa campaña.

Res. 7.—Nunca lo servi de Secretario.

Preg. 8.—Se acuerda Vd de alguna cosa que occurrio en la ocasion de su visita al Padre Real cuando escribio Vd la peticion firmado por José Castro que fixa en su memoria esa circumstancia. Quiero decir alguna cosa que alla ocurrido entre Vd y Castañeda quien ha dicho Vd que fue su compañiero?

Res. 8.—Lo que tengo fixo en mi memoria es que fuimos en esa ocasion a reclamar la huerta de Santa Clara.

Preg. 9.—Se acuerda Vd de alguna cosa que paso entre Vd y Castañeda durante esa visita o luego despues de su salida de allí o en algun tiempo despues que fixa en su memoria el hecho de haber Vd escrito easa peticion en ese tiempo.

Res. 9.—Recuerdo algo; cuando yo y Charley Clayton y Santiago

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Crane fuimos a Sonoma en el año '49 o '50 a comprarle a Castañeda su parte de la huerta de Santa Clara me hizo Castañeda algunas esplicaciones y me dio algunas quejas del Padre Real sobre lo mal que lo habia tratado en la asunto de la huerta que nosotros no habiamos tomado la posecion de la huerta por causa del Padre Real, y entonces me conto que el habia escrito algunos cosas al Padre Real y que tenia esperanzas de vengarse algun dia. El no me dijo lo que habia escrito al Padre Real.

Preg. 10.—Que si el tal Crane de quien Vd ha hablado es un hombre muy conocido entre los antiguos habitantes de California y no es el un individuo que los interesados en pleitos tocantes a cosas que ocurrieron bajo el dominio el Gobierno Mexicano en este pais suelen emplear muy amenudo como agente para bascar testigos y procurar testimonio.

Res. 10.—Si.

Filed Decr. 29th, 1857.

J. EDGAR GRYMES,
Deputy.

DEPOSITION OF JOHN M. MURPHY.

UNITED STATES DISTRICT COURT,
Northern District California.

SAN FRANCISCO, Dec. 23, 1857.

On this day, before Cutler McAllister, Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came John M. Murphy, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT.—United States Attorney by E. Randolph; A. C. Peachy for Claimant.

QUESTIONS BY ATTORNEY FOR CLAIMANT.

Question 1.—Your name, age and place of residence?

Answer 1.—John M. Murphy; I am 33 years of age; I reside in Santa Clara County.

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Ques. 2.—How long have you resided in Santa Clara County?

Ans. 2.—Twelve years.

Ques. 3.—Did you ever live in the Pueblo of San José?

Ans. 3.—I lived there from May or June, 1845, somewhere in the spring of 1845, until 1848.

Ques. 4.—What was your employment there in 1845?

Ans. 4.—I was a clerk in Charles M. Weber's store. He now resides in Stockton.

Ques. 5.—Do you know when the stockade was built by the Americans around the Jusgado at San José, and were you engaged in military service at that time; if so, on which side?

Ans. 5.—The stockade was built some time in the month of November, or beginning of December, 1846, my impression is it was in November; I was a lieutenant in Capt. Weber's company of mounted Rangers, organized under the supervision of Capt. Hull, of the U. S. Navy, on the side of the Americans.

Ques. 6.—Did you know Burton, former Alcalde of San José? If yea, state when he was elected to that office.

Ans. 6.—I did know Burton; he must have been elected some time in October or November, 1846.

Ques. 7.—Who was Alcalde in the months of August and September, 1846?

Ans. 7.—In the month of August, Pedro Chaboya was, and I think September.

Ques. 8.—Did you vote at the election of Burton?

Ans. 8.—I did. The election was held in a room back of Weber's store; we voted *viva voce*.

Ques. 9.—Was that in the dry or the wet season?

Ans. 9,—The rains had commenced, it was raining that day.

Ques. 10.—Do you know Salvio Pacheco?

Ans. 10.—I do.

Ques. 11.—Do you know whether he was living in San José, in the Pueblo, in 1846?

Ans. 11.—Yes, he was.

Ques. 12.—Do you mean the whole year?

Ans. 12.—Yes; that was his place of residence in 1846.

Ques. 13.—Do you know what his employment was in 1846?

Ans. 13.—No, I don't know what employment he was in; he was living there and had a vineyard and a little orchard.

Ques. 14.—Are you acquainted with the handwriting of Salvio Pacheco, and with the signatures of Dolores Pacheco, and Pedro Chaboya?

Ans. 14.—I am better acquainted with the signatures of Dolores Pacheco and Pedro Chaboya, than I am with the handwriting of Salvio Pacheco, because I have seen them write; but I have seen the

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handwriting of Salvio Pacheco so often, that I think I should recognize it.

Ques. 15.—Look at exhibit "A. B." attached to the deposition of José Fernandez, and say if you know the handwriting of the body of this instrument, and say if the signature of Chaboya, wherever the same appears, is his genuine signature.

Ans. 15.—I do not know the handwriting of the body of the instrument; I do recognize the signature of Pedro Chaboya here tho', and it is his genuine signature, it occurs four times in said document.

Ques. 16.—Did you know Andres Castillero, the claimant?

Ans. 16.—I did; I was not particularly intimate with him; I have seen him and spoken with him.

Ques. 17.—Did you ever hear of his having discovered the mine called New Almaden, and of his having had possession of it given him? if yea, state where you first heard it.

Ans. 17.—I heard it first in 1845; it was in Weber's store; Castillero, Pico, and Fernandez, and some others, were in there taking a drink, and I heard them speak of having been out at the newly discovered quicksilver mine, giving or taking possession of the mine. Pico was at that time Alcalde; I do not remember particularly the words that they used, but they related to their having been out taking possession of the quicksilver mine.

Ques. 18.—Do you know when Gen. Castro left California, in 1846?

Ans. 18.—I could not state positively the time; but he left Santa Clara on his way, sometime about the middle of July, it was not over the middle of July; some three, four or five days after the American flag was hoisted I left Monterey, and I saw him in Santa Clara at that time; I went to Sacramento and was gone 8 or 10 days, and when I returned he had left.

Ques. 19.—Do you know when he returned to California?

Ans. 19.—I do not know when he returned to California; I know when he came to Monterey; that was sometime in the month of February or March, 1848; it was in the wet season, after our company was discharged; I do not know exactly the time; I wont be positive.

Ques. 20.—Did his arrival at Monterey create any sensation among the people? State what you saw.

Ans. 20.—There were several of us walked up to Gov. Mason's office, to see Castro ride up there; we saw him ride up, dismount, shake hands with the Governor and walk into his office.

CROSS-EXAMINATION.

Ques. 1.—When did you join Weber's Company?

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Ans. 1.—November, 1846; I could not state the day, about the first of November, I guess.

Ques. 2.—Where was Captain Weber then?

Ans. 2.—He was in San José.

Ques. 3.—What American officer first took San José?

Ans. 3.—I don't recollect that there was any taking about it; Col. Fremont was the first officer that ever entered it with any American forces; that was sometime before the war in Mexico.

Ques. 4.—What American officer first entered it with any American force after the war commenced?

Ans. 4.—I can tell the different officers that entered there with forces; but I cannot tell you which was the first one that entered. There was Watmore of the Portsmouth, Fauntleroy of the Savannah, Pinckney, Fremont's battallion, with the different officers that belonged to it; I could not tell you who they were.

Ques. 5.—About what time did any of these first enter the place?

Ans. 5.—Watmore came there some time in the summer of 1846, and Fauntleroy also; it might have been some time in September, or the latter part of August.

Ques. 6.—How long did either of these officers remain there.

Ans. 6.—I do not know how long; it was not a great while though.

Ques. 7.—When were any troops first stationed in San José; under what officer; how long did they stay there?

Ans. 7.—I have answered already, that I did not know when they first came there, but I think that Watmore's and Fauntleroy's were the first regular troops that came there, that were stationed there for any time.

Ques. 8.—Then I understand you that Watmore and Fauntleroy, with regular troops, occupied San José for some time?

Ans. 8.—Yes; I told you though that I did not know for how long.

Ques. 9.—Were there not also some irregular troops stationed in San José, somewhere near that time?

Ans. 9.—There were some of the citizens there who joined the companies and went out to the Tulare plains after some Indians;

Ques. 10.—When the troops were in San José, where were they quartered?

Ans. 10.—They were stationed in the room that ran back of Weber's store, I mean Watmore's and Fauntleroys.

Ques. 11.—Were not any portion of them quartered in the Jusgado?

Ans. 11.—Of those companies, I think not.

Ques. 12.—Of any other companies?

Ans. 12.—Not at that time.

Ques. 13.—Where were you during the months of July and August, 1846, and what was your occupation?

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Ans. 13.—In the month of July I was in Monterey, Santa Clara, San Francisco, Marin, Napa, and on to Sacramento; I carried some dispatches from Commodore Sloat to Sutter's Fort, and went through those counties on my way to Sacramento: I rode from Monterey to Sacramento in three days, and from Monterey to San Francisco between six o'clock in the morning and a little before dark; from Sacramento I returned to San José; I was taken sick at Sacramento and came down to General Vallejo's house at Sonoma, where I remained some days, and then came to San José; I was gone from the time I started about eight or ten days. The distance between Monterey and San Francisco is about 129 miles; Capt. Montgomery had me landed in a boat at Sonoma; there I got horses, and went on to Sacramento.

Ques. 14.—Where had you been in that month before Commodore Sloat gave you the dispatches to carry up to Sacramento?

Ans. 14.—I was in Santa Clara county before I went to Monterey.

Ques. 15.—At what place in Santa Clara county, and when did you go to Monterey?

Ans. 15.—Either at the ranch, or in the town, I don't know which; I got to Monterey some days after the American flag was hoisted, and stayed there one night and left the next day with dispatches.

Ques. 16.—Did Weber keep his store open in July, 1846?

Ans. 16.—He did.

Ques. 17.—After your return from Saeramento, where did you spend the rest of that month of July?

Ans. 17.—Either on the ranch or at San José.

Ques. 18.—Were you still a clerk of Weber's in July, 1846?

Ans. 18.—No.

Ques. 19.—Where did you spend the month of August, 1846, and what was your occupation?

Ans. 19.—I think I spent the entire month in Santa Clara county; I used to go out and lasso a bullock occasionally, &c.; it might have been in the latter part of August that I went out with Watmore; I am not positive.

Ques. 20.—How do you know that Pedro Chaboya was Alcalde in July and August, 1846; what do you remember to have seem him do as Alcalde?

Ans. 20.—I do not know that I could state any official act that I saw him do; I know that he was by seeing him in the Jusgado, and by his being recognized as the Alcalde of the Pueblo.

Ques. 21.—Do you remember no circumstance whatever of the first entrance of Fremont's men, or any other Ameriean troops into San José?

Ans. 21.—None, except what I have told you.

Ques. 22.—Do you not remember that they took the Jusgado and

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public offices, and that one of Fremont's men struck Pedro Chaboya a severe blow with a pistol ?

Ans. 22.—I did not see the circumstance, but I recollect something about it; Charley McIntosh, one of Fremont's men, having some difficulty with Chaboya, but that was a short time before Fremont went below in 1846, the last time; he must have left San José in October or November.

Ques. 23.—By what circumstance do you remember that it was in the year 1844, that you heard Pico, Castillero and Fernandez, &c., speak about taking possession of the mine ?

Ans. 23.—Because it was in 1845 that I was hired in Weber's store.

Ques. 24.—Were you employed in that store at any time during the year 1846 ?

Ans. 24.—No.

Ques. 25.—At what time did your employment there cease ?

Ans. 25.—It was before Christmas; how long before I do not recollect.

Ques. 26.—How long before your employment ceased there was it that you heard the conversation referred to ?

Ans. 26.—I could not state how long before it was.

Ques. 27.—Was it on the very last day of your employment there ?

Ans. 27.—I do not know; our store was the public resort there at that time.

Ques. 28.—Was it within the last week of your employment there ?

Ans. 28.—I haue no idea, I cannot tell.

Ques. 29.—Was it within the last month of your employment ?

Ans. 29.—I can't say; I do not know.

Ques. 30.—Did your employment there continue up to Christmas ?

Ans. 30.—I think not.

Ques. 31.—Do you remember where you were the Christmas of 1845 ?

Ans. 31.—At that time I was in San José, and on New Years too.

Ques. 32.—Can you remember now whether on those two days, or either of them, you were still a clerk for Weber ?

Ans. 32.—I think I was not.

Ques. 33.—Can you remember whether it was the dry season or the rainy season when you heard the conversation referred to ?

Ans. 33.—I can not.

Ques. 24.—You say Castillero, Pico, Fernandez, &c., were in the store taking a drink when they spoke something about having been to the mine taking possession, was it not part of your duty as a clerk to wait on them, and did you not wait on them on that occasion ?

Ans. 34.—I waited on them; yes.

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DIRECT EXAMINATION RESUMED.

Ques. 1.—Have you lately examined in the city of San José the old records of the Alcalde's office, for the purpose of seeing whether Chaboya in the month of August and September, 1846, performed any official act as Alcalde ?

(Question objected to on the ground that claimant should produce the records or certified copies, and not ask the witness if he had seen such.)

Ans. 1.—I examined in the County Recorder's office of Santa Clara county, the old Alcalde records there, and found records there signed by Chabolla, bearing date August and July, 1846; I would not be positive whether there is or is not any records there bearing date September, 1846.

(Question and answer objected to upon the ground also that the legal custodian of said records is the proper person to prove whether books in that office are books of record or not.)

JOHN M. MURPHY.

Subscribed and sworn to before me this 23d day of December, 1837.
CUTLER McALLISTER,
U. S. Commissioner.

Filed September 6, 1858.
W. H. CHEVERS, Clerk.

DEPOSITION OF DOMINGO DANGLADA.

UNITED STATES DISTRICT COURT,
Northern District California.

SAN FRANCISCO, Dec. 29, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c. &c., came Domingo Danglada, a witness produced on behalf of the United States, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in

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Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows :

PRESENT. E. Randolph for United States Attorney; A. C. Peachy for Claimant.

QUESTIONS BY U. S. ATTORNEY.

Ques. 1.—Your name, age, business, place of residence?

Ans. 1.—My name is Domingo Danglada; I am 50 years old; I reside in the Mission of Dolores, but attend to my business here in San Francisco; I am a Merchant.

Ques. 2.—Look at the paper attached to the deposition of John Paty which purports to be a certificate of Carlos Horn under the seal of the "Capitania del Puerto de San Blas" Mexico, with another certificate by Ignacio Echagaray, under the seal of "Gobieino Politico del Canton de Topic" Mexico. and say whether you have ever seen that paper before, this paper being the same marked "J P. No. 5," attached to the deposition of John Paty?

(Question objected to on the ground that whether the witness has or has not seen that paper before is an irrelevant fact.)

Ans. 2.—I have seen this paper before.

Ques. 3.—When, and in what manner did it come to your knowledge?

(Question objected to on the ground that the manner in which the paper came to the witness' knowledge is an irrelevant fact.)

Ans. 3.—I don't reccollect exactly when I first saw it, but a person of the name of H. Laurencel applied to me in the month of June last, requesting me to ask from the Captain of the Port of San Blas a certificate of the arrival of the Kanaka ship "Don Quixote" Captain John Paty, which vessel the said Laurencel said had sailed in the year 1846 from Monterey to San Blas sometime in the month of April, although he was not very sure of the date of the sailing; as Mr. Laurencel was a person unknown to me, after I took some information, I wrote to Mr. Casmiro Mendoza of Tepic, stating that the said vessel must have arrived about the month of April and May at the port of San Blas, and I wished him to apply to the Captain of the port of San Blas, and get a certificate of the arrival according to the records which must be kept in the archives of the office of the Captain of the port in the book of the arrivals and departures of vessels, consequently my friend Mendoza forwarded to me the certificate which has been

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shown to me, which I gave to Mr. Laurencel in a letter dated 16th September 1857; this is all I know of this thing.

Ques. 4.—Of whom did you take information before you wrote; what person or persons do you refer to?

Ans. 4.—As Mr. Lanrencel left a note stating that he wanted to see me, and I was not acquainted with him, I enquired what kind of a person he was; I enquired of Messrs. Casseau, Pouton and others.

Ques. 5.—Did you send any formula by which to have the certificate made out?

Ans. 5.—I think I only sent the name of the vessel and the Captain, stating that I wanted the certificate, certifying the day of the arrival of the vessel in the port of San Blas in conformity with the records kept in the book of the arrivals in the office of the Captain of the port; I could not have sent a form when I did not know in what month or on what day she arrived.

Ques. 6.—Who is this Mr. Mendoza, what is his business in Tepic?

(Question objected to on the ground that Mr. Mendoza's business is irrelevant.)

Ans. 6.—He is one of the most respectable gentleman in Tepic; he has stores, houses and ranches.

DOM°. DANGLADA.

Sworn to and subscribed before me this 29th day of December 1857.

{SEAL}

CUTLER McALLISTER,
U. S. Com.

Filed Sept. 6, 1858.

W. H. CHEVERS,
Clerk.

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DEPOSITION OF JOHN M. MURPHY.

UNTED STATES DISTRICT COURT,
Northern District of California.

ON APPEAL FROM U. S. LAND COMMISSION.

ANDRES CASTILLERO,
v.
THE UNITED STATES.

Question 1.—What is your name; age; and place of residence?

Answer 1.—My name is John M. Murphy; my age 33 years, and I reside in Santa Clara County.

Ques. 2r—Are you tne witness of the same name who has heretofore testified in this case; how long have you resided in Santa Clara County, and what public offices have you held?

Ans. 2.—I am the same witness; I have resided in Santa Clara County since the year 1845, some time in May or June; I have held the offices of County Treasurer, County Recorder, and am now Sheriff of Santa Clara County; I have also been Mayor of the city of San José in that county.

Ques. 3.—Look at the document now shown you marked "Exhibit No. 1." annexed to the deposition of John M. Murphy, purporting to contain copies of certain official acts done by Pedro Chabolla, Alcalde of San José, as they appear of record in a book now in the office of the Recorder of Santa Clara County, and state whether you have compared all of the copies in this Exhibit with their originals, and whether the said copies are exact and true. State also whether you are acquainted with the handwriting and signatures of said Pedro Chabolla and Salvio Pacheco, and whether their signatures to the original documents are genuine; and further whether you are acquainted with the book in which said original acts are written and signed, and if you know where the said book formerly existed.

Ans. 3.—I have compared the papers in the said Exhibit with the record in County Recorder's office of Santa Clara, and they are a correct copy of the record; I am acquainted with the handwriting and signatures of said Chabolla, and said Pacheco; I have seen them both sign their names, but of the writing of Chabolla I have seen but little; I believe their signatures to the said original documents in the record, are their genuine signatures; I know the book referred to in the question, it existed formerly in the Alcalde's office at San José; I

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saw it in the Alcalde's office in 1846 and 1847, I might have seen it there in 1845 for all I know, about that time there were very few books kept in the Alcalde's office.

CROSS-EXAMINED.

Ques. 1.—Were you employed in the Alcalde's office in the years 1845, 1846 and 1847, or either of them, as clerk, or in any other public capacity?

Ans. 1.—I was not employed in the office, I acted as sheriff or something of that sort, to collect a license tax in the year 1846 or 1847, I can't be positive which, under the orders of the Alcalde.

Ques. 2.—Were the orders of the Alcalde which you executed, or your returns upon them, entered upon them, entered in that book to which you have referred in your direct examination?

Ans. 2.—They were not; my impression is that book was kept entirely for recording grants of *solares*, and marks and brands; the Alcalde under whom I acted was John Burton, to the best of my recollection.

Ques. 3.—Did you read all the papers in "Exhibit No. 1," of which you have testified on your directed examination, in the book of which you have testified, at the time when you first saw said book; Do you know of your own knowledge whether said papers were then written in said book?

Ans. 3.—I did not read the papers in the book at the time referred to; I do not know whether they were written in the book or not.

Ques. 4.—Do you know where that book has been kept or left all the time since 1846?

Ans. 4.—I do not.

JNO. M. MURPHY.

STIPULATION.

This witness having been sworn in this case on a former day, it is hereby stipulated that the foregoing questions and answers may be offered and read in evidence by the claimant on the trial of this case, with the legal effect they would have if the same had been propounded and given in a deposition of the said John M. Murphy, regularly taken, subscribed and sworn to in open court, or before a Commissioner authorised to take the same.

SAN FRANCISCO, Jany. 25th, 1858.

EDMUND RANDOLPH,
P. DELLA TORRE,
U. S. Att'y.

Filed Jan'y. 26, 1858.

W. H. CHEVERS,
Dep. Clerk.

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EXHIBIT No. 1, ANNEXED TO THE DEPOSITION OF JOHN M. MURPHY,

Pedro Chabolla, Alcalde, to Santiago Estoc—Grant of Land—Copy—1.

Pedro Chabolla Alcalde Constitucional del Pueblo de S. José Gpē. actuando p^{r}. receptoria con dos testigos de asistencia á falta de escribano Publico.

En el espresado Pueblo á los veinte dias del mes de Agosto de mil ochocientos cuarenta y seis en virtud de la representacion q^{e}. el becino de mi mando Santiago Estoc hace y en vista de la necesidad q^{e}. efectibam^{te} presenta á nombre de su familia é benido p^{r}. los facultades q^{e}. la ley de colonizacion reglam^{to} antiguo y decreto sup^{r}. que faculta á los jueces respectibos para conceder y permitir dentro de los egidos de su Poblado por lo tanto permito y a conbenido con este becindario que se le midan las dos mil varas de tierra que pretende para labores no perjudicando la bendita Publica y que estos sean en calidad de prestamo hasta la disposicion ó haprobacion del Gov^{no}. q^{e}. establesca, y habiendo pasado al punto sitado de llamaron por testigos medidores á los C. C. Antonio M^{a}. Pico y Eusebio Galindo los que prometieron hacer fielm^{te} su oficio, y se prosedio á las medidas de las dos mil varas pretendidas y ponga sus bienes de campo en sysieno, de lo que no habiendo contidicion alguna quedaron las medidas echas desde la tierra que tiene consedido D^{n}. Antonio Suñol para afuera de su llanma, y por su constancia se lo dio el presente testimenio, y el Juez del espresado Pueblo lo dade haber pasado como dhō. es y que las medidas se han echo con la mayor legalidad p^{r}. los medidores, y para que conste en todo tiempo y lugar lo firmaron los de asistencia con el presente Juez. Be it rembered that James Stakes has given up this title on conditions of getting one of the "Pedro Chabolla (five) "ast^{a}" Hundred acre lots which was granted August 19th, 1847. Rubric

ANTONIO M^{A}. PICO.
Rubric.

ast^{a}

CHAS. WHITE,
Clk.

JOHN BURTON,
Alcalde.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I, Austin M. Thompson County Recorder in and for said County do hereby certify that the foregoing is a full true and correct copy of

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a document recorded in my office on pages 7 & 8 in Book Number One of the Records of said County of Santa Clara.

{ SEAL } In testimony whereof I have hereunto set my hand and affixed my official seal this 9th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY SHERMAN O. HOUGHTON,
Deputy.

Pedro Chabolla, Alcalde, to —*Copy*—2.

Pedro Chaholla Alcalde constitucional del Pueblo de S. José Gpē. actuando pr. receptoria con dos testigos de asistencia á falta de escribano publico.

En el espresado Pueblo á los catorce dias del me sepbrē de mil ocho cientos cuarenta y seis en virtud de la presente instancia e benido en concederle al interesado sincuenta varas de solar pr. frente, y cuarenta y dos de fondo ciendo medidores testigos los C. C. Salvio Pacheco y Antonio Ma. Pico los cuales fielmte midieron dhō. solar á continuacion del que sigue para el jusgado, y para su constancia le da el presente testimonio y el Juez del espresado Pueblo lo da de aber pasado como dhō. es de lo q°. diga pagado su correspondte derecho, y traspasado este al libro respectibo de solares á fojas ocho lo que firmo el juez con los de asistencia e posesion es de esta.

PEDRO CHABOLLA.
Rubric.

asstª. astª.
SALVIO PACHECO.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Austin M. Thompson County Recorder in the County of Santa Clara in the State aforesaid do hereby certify that the foregoing is a full true and correct copy of an instrument of writing on record in my office on page 8 in Book Number One of Deeds, of the Records of said County of Santa Clara.

{ SEAL } In testimony whereof I have hereunto set my hand affixed my official seal this 9th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

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Pedro Chabolla, Alcalde, to Francisco Matey—Grant of Solar—Copy—3.

Por cuanto á la presente instancia yo Juez constitu^{l}. Ciudadano Pedro Chabolla á los diez y seis dias del mes de Sbrē. de mil ochocientos cuarenta y seis havitud de no aber inconvin^{te} p^{a} que la persona del Sā. Fran^{co} Matey, fabrique en este lugar e benido en concederle siento cincuenta varas de solar p^{r}. frente y sincuenta de de fondo a continuacion del que tiene medido D^{n} Pedro Davis, siendo testigos y medidores los que subscriben, quienes fielm^{te} au cumplido su oficio y para su constancia se le da el presente testimonio de le que deja pagado su drō. correspond^{te} y le doy firmado.

PEDRO CHABOLLA.
Rubrica.

asta.
SAVIO PACHECO.
Rubrica.

ast^{a}.
DIEGO GUILLERMO WEEKES.
Rubrica.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

I, Austin M. Thompson County Recorder in and for the County of Santa Clara in the State aforesaid do hereby certify that the foregoing is a full true and correct copy of an instrument of writing of record in my office on page eight in Book Number One of Deeds of the Records of said County.

{ SEAL } In testimony whereof I have hereto set my hand and affixed my official seal this 9th day of January A. D. 1858.

A. M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

Pedro Chabolla, Alcalde, to Diego Gill^{o} Weekes—Grant of Solar—Copy—4.

Por cuanto á la presente instancia yo Juez constitucional Ciudadano Pedro Chaboya á los diez y siete dias del mes de Sbrē de mil ochocientos cuarenta y seis ha virtud de no haber inconveniente para que la persona del Sōr. Diego Guillermo Weekes fabrique en este lugar é benido en consederle cincuenta varas de frente y cincuenta de fondo en continuasion de los tierros que poseé Don José Mª Flores asia el

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Sur en donde puede poner su casa y para su constancia se le da el presente testimonio de haver pasado como dhō. es y que los medidos fueron hechas fielm^te por los medidores testigos que firmaron con el presente Juez y deja pagado sus derechos en este Jusgado.

Lo que quedo sentada en el libro Respectibo á fojas 9, nueve.

PEDRO CHABOLLA.
Rubric.

ast^a
SALVIO PACHECO.
Rubric.

ast^a
VICENTE JUARES.
Rubric.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Austin M. Thompson County Recorder in and for the County of Santa Clara in the State of California do hereby certify that the foregoing is a full true and correct copy of an instrument of writing of record in my office on page Nine in Book Number One of the Records of Santa Clara County.

SEAL — In testimony whereof I have hereunto set my hand and affixed my official seal this 9th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

Pedro Chabolla, Alcalde, to Peter Davis—Grant of Solar—Copy—5.

Por cuanto ala presente instancia, yo Juez constitutional Ciud^o. Pedro Chabolla, á los veinte y cinco dias del mes de Septiembre de mil ocho cientos cuarenta y seis, ha virtud de no haber inconvent^e para que la persona del Señor Pedro Davis, tomo sincuenta varas de tierra para favricar casa é benido en consederle las sincuenta varas de tierra que pide en seguida del que tiene comprado á la Srā Rosa Patron p^r. delante al sur con las medidas de cuarenta y tres de frente y de fondo las dhās. sincuenta siendo medidores testigos los que subscriba y para su constancia se le da el presente testimonio lo que queda pasado al libro de asientos á fojas nuebe, y deja pagado su dhō. en este jusgado de mi cargo.

PEDRO CHABOLLA.
Rubrica.

SALVIO PACHECO.
Rubrica.

MARIANO CASTRO. †

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STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Austin M. Thompson County Recorder in and for the County of Santa Clara in the State of California do hereby certify that the foregoing instrument of writing is a full true and correct copy of a document of record in my office on page 9 in Book Number one of Deeds of the Records of the said Counta of Santa Clara.

{ SEAL } In testimony whereof I have hereto set my hand and affixed my official seal this 9th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

Pedro Chabolla, Alcalde, to Salvio Pacheco—Grant of Solar—Copy—6.

Pueblo S. José G. Junio 16 *de* 1846.

Por presentado la parte interesado en este jusgado pasé á darle la posesion q^{e}. p^{a}. ley merese y queda tomada razon en el libro respectibo de solares a fogas sinco q^{e}. es en los terminos sig^{tes}.

Por cuanto á las facultades que la ley de treinta y cuatro me confiere: Yo Juez de 2ª nominacion C^{o}. Pedro Chabolla actuando por reseptorio con dos testigos de asistencia. En el mismo dia mes y año pasé ala casa del Ciud^{o}. Salvio Pacheco y tomando la medida del frente de su finca con otras mas V^{a}. segun demuestra los simientos anteriores resultan medidas beinte y sinco varas por frente y de fondo sesenta y siete hasta la seria de guerta, en seguida se an medida siento once baras de dh^{o}. guerta de largo y cuarenta de frente por lo que ni incentiando contidicion alguna y ha satisfacion del interesado se le dio la posesion juridica lo que pedio p^{a}. testimonio, y el Juez del espresado Pueblo la da de haber pasado como dhō. es y que las medidas tanto de solar como de guerta se han hecho con la mayor legalidad p^{a}. las medidas y para que conste en todo en todo tiempo y lugar firmaron los de asistencia con una señal de Cruz, con el presente Juez.

PEDRO CHABOLLA.
Rubric.

ast^{a}.
MARIANO CASTRO. †

asst^{a}.
JOSÉ FELIZ. †

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STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Austin M. Thompson County Recorder in and for the County of Santa Clara in the State aforesaid do hereby certify that the foregoing is a full true and correct copy of an instrument of writing recorded in Book Number One of Deeds on pages 5, of the Records of said County.

{ SEAL } In testimony whereof I have hereunto set my hand and affixed my official seal this 8th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

Pedro Chabolla, Alcalde, to —*Grant of Solar*—*Copy*—7.

Pueblo de S. José Ag^to 19 *de* 1846.

Por cuanto á las facultades que la ley de colonisation y reglam^to antiguo me confiere que es respecto á solares. Yo Juez de 1°. nominacion C°. Pedro Chabolla actuando p^r. reseptoria con dos testigos de asistencia á falta de escribano publico. Pasé en el mismo dia mes y año a virtud de la presente instancia y se prosedio a la medida de su solar tomando el frente de veinte y cinco varas y cuadro con sesenta de fondo completandosele dhās. baras del frente para el otro lado del callegón p^a. lo que no aviendo contradicion alguna y á satisfacion del interesado se dio la posecion juridica lo que pidio por testimonio y el Juez del espresado Pueblo la da de aber pasado como dhō. es y que las medidas de solar se an echo con legalidad por los medidores y para q^e. conste en todo tiempo y lugar firman los testigos con causa senal de Cruz, con el presente Juez.

PEDRO CHABOLLA.
Rubric.

ast^a.
JOAQ^N. MORAGA. †

asistencia.
MANUEL CANTUA.

STATE OF CALIFORNIA, } ss.
COUNTY OF SANTA CLARA. }

I, Austin M. Thompson County Recorder in and for the County of Santa Clara in the State aforeseid do hereby certify that the foregoing instrument of writing is a full, true and correct copy of a document recorded in Book Number One of Deeds, on page 6, of the records of said County.

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The erasure of the words " treinta y cuatro " and the interlineation of the words " colonizacion y reglamt° antiguo " being made upon the record.

SEAL

In testimony whereof I have hereunto set my hand and affixed my official seal this 8th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

Pedro Chabolla, Alc^de, to Tomas Pacheco—Grant of Solar—Copy—8.

Pueblo de San José G. Agosto 18 *de* 1846.

Por cuanto a las facultades q^e. la ley de treinta y cuatro me confiere yo juez de 2ª nominacion Ciudadano Pedro Chabolla actuando p^r. reseptoria cos dos testigos de acistencia á falta de escribano publico En el mismo dia mes y año aviendo pasado á la casa y solar del C. Tomas Pacheco y di principio á las medidas de su solar siendo medido por frente veinte y sinco varas y de fondo sesenta por lo no aviendo contradicion alguna ya satisfacion del ynteresado sedio la posecion juridica lo q^e. pidio por testimonio y el Juez del espresado Pueblo lo da de aber pasado como dueño es y q^e. las medidas del solar se han echo con legalidad por los medidores, y p^a. q^e. conste en todo tiempo y lugar Firman los de asistencia con una de cruz y el presente Juez.

PEDRO CHABOLLA.
Rubric.

ast^a.
JOAQ^N MORAGA. †

ast^a.
MANUEL CANTUA.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA. } ss.

I Austin M. Thompson County Recorder in and for the County of Santa Clara in the State aforesaid do hereby certify that the foregoing is a full true and correct copy of an instrument of record in the County Recorder's of said County in Book Number One on pages 5 & 6, of the records of said County.

SEAL

In testimony whereof I have hereunto set my hand and affixed my official seal this 8th day of January A. D. 1858.

AUSTIN M. THOMPSON,
County Recorder.
BY S. O. HOUGHTON,
Deputy.

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STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. } ss.

On this Eleventh day of January A D 1858 before me Austin M Thompson a Notary Public within and for the County aforesaid personally came John M Murphy who being duly sworn deposes and says. That he is well acquainted with the signature of *Pedro Chabolla* who was 2d Alcalde of the Pueblo de San Jose de Guadalupe in the year 1846—that he has examined the original record book of the County of Santa Clara from which the annexed copies Nos 1 to 8 inclusive were copied and certified to by the county recorder of said Santa Clara County, and that he believes the said signatures of Pedro Chabolla alcalde aforesaid are genuine and true as they appear on said record book No 1 of the said records of Santa Clara County.

JNO. M MURPHY.

{ SEAL } Subscribed and sworn to before me this the 11th day of January A D 1858.
Witness my hand and official seal,

AUSTIN M THOMPSON,
Notary Public.

Filed Jan'y 26, 1858.

W. H. CHEVERS,
Dep. Clerk.

TRANSLATION OF "EXHIBIT NO. 1."

Pedro Chavolla, Constitutional Alcalde of the Pueblo of San José Guadalupe, acting *ex officio* with two witnesses of assistance for want of a Notary Public.

In the said Pueblo on the 20th day of the month of August, 1846, in virtue of the representation of the citizen James Estoc, and in view of the necessity which he effectively presents in the name of his family, I have by the powers which the laws of colonization formerly in force, and the superior decree which empowered the respective magistrates to grant and permit witnin the common lands ot their population, therefore permitted, and it has been agreed with the community, that there be measured the two thousand varas of land which he asks for cultivation, without prejudicing the said public, and understanding that it may be in the nature of a loan, until the disposition or approval which the Government may establish, and having passed to the said point, there were called as witnesses of the measurement, citizens An-

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tonio Maria Pico and Eusebio Galindo, who promised faithfully to perform their office, and proceeded to the measurement of the two thousand varas asked for, and he placed his stock, of which there being no opposition, they left the measurements made from that which Don Antonio Suñol has granted to him outside of his plain, and in proof of which I gave him this present testimony, and the justice of said Pueblo give it as having passed as aforesaid, and as the measurements are made with the greatest legality by the measurers, and as a testimony for all time and place, those of assistance signed it with the present magistrate.

PEDRO CHAVOLLA.

Assisting: ANTONIO MARIA PICO. Assisting: CHAS. WHITE.

Pedro Chavolla, Constitutional Alcalde of the Pueblo of San José Guadalupe, acting *ex officio* with two witnesses of assistance for want of a Notary Public.

In the said Pueblo on the 14th day of the month of September, 1846, in virtue of the present proceeding, I have granted to the party interested a lot of fifty varas front by forty-two deep, being measurers the witnesses citizens Salvio Pacheco and Antonio Maria Pico, who faithfully measured said lot to the continuation of that which follows for the Court, and in proof of it the present testimony is given, and the Magistrate of the said Pueblo gives it as having passed as is said, the corresponding fees are paid, and this transferred to the respective book of lots on the leaf 8, which the Magistrate signs with those of assistance, and possession is of this.

PEDRO CHAVOLLA.

Of Assistance: SALVIO PACHECO. Of Assistance:

Whereas, at the present instance of the Constitutional Magistrate, citizen Pedro Chavolla, on the 16th day of the month of September 1846, there appears no objection that the person of Francisco Mates may build in this place, I have granted a solar of fifty varas front and fifty in depth, in continuation of that which Don Pedro Davis has measured, being witnesses and measurers those who subscribe, and who faithfully performed their office, and for its proof the present testimony is given, that his corresponding fees all paid, and I give this signed.

PEDRO CHAVOLLA.

Of assistance: SALVIO PACHECO. Of assistance: DIEGO GUILLERMO WEEKS.

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Whereas, at the present instance of the Constitutional Magistrate, citizen Pedro Chavolla, the 17th day of the month of September 1846, in virtue of there being no objection that the person of Señor Don Diego Guillermo Weeks may build in this place, I have granted to him fifty varas front and fifty in depth, in continuation of those which Don José Ma. Flores has to the south where he can put his house, and for the proof of it there is given the present testimony of having passed as is said, and that the measurements were faithfully made by the measurers, the witnesses who sign with the present Magistrate, and the fees are paid in this Court. It is recorded in the respective book, at leaf nine (9.)

PEDRO CHAVOLLA.

Of assistance:
SALVIO PACHECO.

Of assistance:
VICENTE JUARES.

PUEBLO OF S. JOSÉ GUADALUPE, June 16th, 1846.

The party interested having presented in this Court, I proceeded to give him the possession of which by law he is entitled, and note is taken in the respective book of lots at leaf 5, which is in the following terms:

Whereas, by the powers which the law of thirty-four confers on me, I the Magistrate of 2nd nomination, citizen Pedro Chavolla acting *ex officio*, with two witnesses of assistance.

In the same day, month and year I passed to the house of citizen Salvio Pacheco, and taking the measurement from the front of his improvement with others more old, as the anterior masonry shows, their result measurement twenty-five varas front and sixty-seven in depth, to the garden enclosure, in continuation there are measured one hundred and eleven varas of said garden in length, and forty of front, to which there being no objection, and the party interested being satisfied the juridical possession which was asked for is given for testimony, and the Magistrate of the said Pueblo gave it as having passed as is said, and which the measurements as well of the lot as of the garden are made with the greatest legality, for the measurements and for proof in all time and place those of assistance sign with the mark of the cross with the present Magistrate.

PEDRO CHAVOLLA.

Of assistance:
MARIANO CASTRO †

Of assistance:
JOSÈ FELIZ †

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PUEBLO OF SAN JOSÈ, August 19th, 1846.

Whereas, by the powers which the law of colonization and the ancient regulations confer on me with respect to lots, I the Magistrate of the second nomination, citizen Pedro Chavolla, acting *ex officio* with two witnesses of assistance for want of a notary public.

I passed in the same day, month and year, in virtue of the present instance, and proceeded to the measurement of his lot taking the front of twenty-five varas and a quarter by sixty in depth, the said varas of front being completed by the other side of the alley, by reason of their being no opposition and to the satisfaction of the party interested, the juridical possession which is asked is given for testimony, and the Magistrate of the said Pueblo gives it as having passed as is said, that the measurements of the lot are made with legality by the measurers, and as a proof of it in all time and place the witnesses sign with the mark of the cross, with the present Magistrate.

PEDRO CHAVOLLA.

Of assistance:
JOAQUIN MURAGA †

Of assistance:
MANL. CANTUA †

PUEBLO OF SAN JOSÈ GUADALUPE, August 18th, 1846.

Whereas, by the powers which the law of thirty-four confers on me, I the Magistrate of second nomination, citizen Pedro Chavolla, acting *ex officio*, with two witnesses of assistance for want of a Notary Public.

In the same day, month and year, having passed to the House and lot of citizen Tomas Pacheco, and began the measurements of his lot being measured by the front twenty-five varas, and in depth sixty, there being no opposition and the party interested being satisfied, the juridical possession which was asked for is given for testimony, and the Magistrate of the said Pueblo gives it as having passed to him as owner, and that the measurements of the lot were made with legality by the measurers, and as a proof in all time and place, those of assistance sign with a cross, and the present Magistrate.

PEDRO CHAVOLLA.

Of assistance:
JOAQUIN MURAGA †

Of assistance:
MANUEL CANTUA †

Filed, January 26th, 1858.

W. H. CHEVERS,
Dep. Clerk.

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DEPOSITION OF RAFAEL SANCHEZ.

UNITED STATES DISTRICT COURT,
Northern District California.

SAN FRANCISCO, Jan'y 30, 1858.

On this day, before Geo. Pen Johnston, a Commissioner of the United States for the District of California. duly authorized to administer oaths, &c., &c., came Rafael Sanchez, a witness produced on behalf of the Claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle Private Land Claims in the State of California, in Case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows :

PRESENT.—A. C. Peachy, Esq., for Claimant ; United States District Attorney, by E. Randolph, Esq., for the United States.

QUESTIONS BY A. C. PEACHY, ESQ.

Ques. 1.—What is your name, age, and place of residence ?

Ans. 1.—My name is Rafael Sanchez ; I am fifty-one years of age ; and reside in Monterey.

Ques. 2.—Do you know Manuel Castro ?

Ans. 2.—I do ; I have known him since the year 1843.

Ques. 3.—Do you know what office Manuel Castro held in the year 1845 ?

Ans. 3.—He was then Prefect of the Second District.

Ques. 4—Are you acquainted with the signature and rubrics of Manuel Castro ?

Ans. 4.—I know his signature and rubric.

Ques. 5.—Examine the Document now shown you, being one of those this day produced by Chapman Yates, Clerk of the city of San José, on his examination in this case before Cutler McAllister, Esq., United States Commissioner, said document being the original, of which "Exhibit No. 2, annexed to the deposition of Chapman Yates" is a copy, and state, if the signature and rubrics of Manuel Castro, thereto, is the genuine signature of said Castro.

Ans. 5.—I have already said that that signature is the genuine signature of Manuel Castro ; it is his genuine signature and rubric.

RAFAEL SANCHEZ.

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Sworn to and subscribed before me this 30th day of January 1858.

GEO. PEN JOHNSTON.
U. S. Com.

DEPOSITION OF WM. McCUTCHIN.

UNITED STATES DISTRICT COURT,
Northern District California.

SAN FRANCISCO, Jan'y. 30, 1858.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came William McCutchin, a witness produced on behalf of the Claimants in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 466 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

PRESENT.—A. C. Peachy, for Claimant; United States Attorney by E. Randolph.

QUESTIONS BY A. C. PEACHY, ESQ.

Ques. 1.—Your name, age and place of residence? How long have you resided in California? Are you acquainted with Antonio Maria Pico, Pedro Chabolla, José Fernandez, and James Alexander Forbes or any of them; if yea, how long have you known them?

Ans. 1.—William McCutchin; I am 42 years of age; I reside in San Jose, Santa Clara County; I have resided in California since 13th of Oct., 1846; I arrived at Sutter's Fort that day; I know Antonio Maria Pico, Pedro Chabolla, José Fernandez and James Alexander Forbes; I have known them all since the early part of 1849.

Ques. 2.—Are you acquainted with the hand writings and signatures of the said Pico, Chabolla, Fernandez and Forbes? if yea, state your means of knowledge.

Ans. 2.—I am acquainted with the signatures and hand-writing of Pico, Chabolla, Fernandez and Forbes; I have seen them all write, and sign their names; I have transacted business with all of them.

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Ques. 3.—Look at the document now shown you, being one of the documents this day produced by Chapman Yates, Clerk of the City of San José on his examination in this case, before Cutler McAllister, Esq., United States Commissioner, the said document being the original of which "Exhibit No. 1, annexed to the deposition of Chapman Yates" is a copy, and state, if you know in whose hand-writing is the body of said instrument, and whether the signatures and rubrics of Antonio M. Pico, and Pedro Chabolla, thereon appearing, are the genuine signatures of the said Pico and Chabolla.

Ans. 3.—My impression is that the body of the document was written by Jose Fernandez; the signatures and rubrics thereon appearing, are the genuine signatures and rubrics of Pico and Chabolla.

Ques. 4.—Look at the document now shown you, being one of the documents produced by the said Yates as described in question 3, the same being the original of which, "Exhibit No. 3, annexed to the deposition of Chapman Yates," is a copy, and state, if you know in whose hand-writing is the body of said instrument, and whether the signature of James Alexander Forbes thereto, is the genuine signature of said Forbes.

Ans. 4.—I believe the body of the instrument to be in the hand-writing of James Alexander Forbes, and the signature thereto, his genuine signature.

WM. McCUTCHIN.

Sworn to and subscribed before me this 30th day of January 1858.

CUTLER McALLISTER,
U. S. Com.

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SUBPŒNA.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA,
COUNTY OF SAN FRANCISCO.

In the Circuit Court of the United States for the Districts of California, in and for the Northern District.

THE UNITED STATES
v.
ANDRES CASTILLERO.

The President of the United States of America, To Mr. Yates of San José, and bring with you, 1st, a letter from J. A. Forbes to John Burton, Alcalde, dated 14th August, 1847; 2d, an official communication from Man'l Castro, to the Alcalde of San José, dated 15th Decr. 1845; 3d, an inventory of papers and other things purporting to be an original, signed by A. M. Pico, and receipted for by Pedro Chabolla, on 2d January, 1846, said papers being in the Archives of San José, Greeting:

You are hereby required, That all and singular business and excuses being set aside, you appear and attend before C. McAllister, a Commissioner of the Circuit Court of the United States for the Districts of California, at the Court House in the City of San Francisco, on the 30th day of January, A. D. 1858, at one o'clock, P.M., then and there to testify in the above stated cause now pending in the District Court of the U. S. on the part of the above named defendant. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all losses and damages sustained thereby to the party aggrieved.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 28th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of our Independence the eighty-second.

SEAL

Attest, GEO. PEN JOHNSTON,
Clerk,

[SEAL] By CUTLER McALLISTER,
Dep. Clerk.

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I hereby certify that this subpœna was received on the 28th day of January, 1858, and served personally by delivering a copy to Chapman Yates, in the city of San Francisco, on the 30th day of January, 1858.

San Francisco, Jan. 30, 1858.

P. L. SOLOMON,
U. S. Marshal,
By JOHN H. WILLIAMS,
Deputy.

DEPOSITION OF CHAPMAN YATES.

United States District Court, Northern District of California. } ss.

San Francisco, Jan. 30, 1858.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Chapman Yates, a witness produced on behalf of the Claimant, in Case No. 320, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 466 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: A. C. Peachy, for Claimant; The United States Attorney, by E. Randolph.

Questions by A. C. Peachy, Esq.

Question 1.—Your name, age, and place of residence?

Answer 1.—Chapman Yates; I am 48 years of age; I reside in San José, Santa Clara County.

Ques. 2—What office do you hold at present?

Ans. 2.—I am Clerk of the Board of Trustees of the City of San José, City Clerk.

Ques. 3.—Produce the documents which you have been directed by a subpœna to bring with you, and state where you obtained them; where they belong; in whose charge and custody they are, and wheth-

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er you can permit said documents to be filed in this Court as evidence in this case, or are obliged to retain them in your custody.

Ans. 3.—I produce the documents referred to in said subpœna; I obtained them from the archives of the City of San José; they belong in the archives of that city; they are in my charge and custody as Clerk of the City of San José; I am not authorized to let them go out of my custody at all, or to let any one examine them except in my presence.

(The Counsel for the Claimants offers to annex to this deposition three documents which are copies of the three documents produced by the witness as stated in the preceding answer, said copies being marked respectively, "Exhibit No. 1, Annexed to the deposition of Chapman Yates." "Exhibit No. 2, Annexed to the deposition of Chapman Yates," and "Exhibit No. 3, Annexed to the deposition of Chapman Yates," which the Attorney for the U. S. admits to be accurate and exact copies of the originals.)

Ques. 4.—To what part of the archives of the City of San José do the documents which you have produced belong; did they formerly constitute a part of the archives of any other office; if yea, what office?

Ans. 4.—They are papers that have accumulated under the government of Alcaldes of the Pueblo; they were delivered to me by the Board of Trustees as part of the archives of the city.

CROSS-EXAMINATION.

Ques. 1.—Look at the document marked "Exhibit No. 4, annexed to the deposition of Chapman Yates," and state whether the certificate, signature and seal, is your certificate and signature, and the seal of the city of San José.

Ans. 1.—That is my certificate and signature, and the seal of the City of San José, the original of this paper exists in the same archives as the other papers of which copies are annexed to this deposition, on the part of the claimant; this is a true and correct copy of the original in my possession in the archives of San José; the original of this paper could not go out of my custody; this paper purports to be an inventory of effects and documents found in the office of the Alcalde, and delivered to the new Judge Don Juan Burton, on the 10th Nov. 1846.

Ques. 2.—Look at the paper now shown you; state whether the certificate, signature and seal, are genuine; what the contents of this document are; where you found it; whether it is a true copy of the original, &c.

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(Said paper is annexed to this deposition marked "Exhibit No. 5, annexed to the deposition of Chapman Yates.")

Ans. 2.—That is my certificate and signature, and the seal is the seal of the City of San José; it is an extract from the minutes of the Common Council of San José; I found the original among the archives of the City of San José; this is a true copy of the original; this is a public document, and I cannot part with the possession of it.

Ques. 3.—Look at the paper now shown you, marked "Exhibit No. 6, annexed to the deposition of Chapman Yates," and say what paper it is.

Ans. 3.—It is a copy of an Alcalde's record in the archives of the City of San José, now under my charge; it is a true and exact copy certified by myself, and I believe Burton was Alcalde at that time; the originals are public papers, which cannot be allowed to come out of my office, and therefore they cannot be filed in this case.

Ques. 4.—Look at the papers now shown you, marked relatively, "Exhibits No's. 7, 8, 9, and 10, annexed to the deposition of Chapman Yates," and say what papers they are.

Ans. 4.—I have examined all the papers, and they are correct copies of original documents filed in the archives of San José, now under my charge; they are certified copies made out by myself; the originals are public papers, which cannot be allowed to come out of my office, and therefore they cannot be filed in this case.

(Counsel for the Claimant offers in evidence "Exhibits Nos. 1, 2, and 3, annexed to the deposition of Chapman Yates.")

(Counsel for the U. S. offers in evidence "Exhibits 4, 5, 6, 7, 8, 9, 10, annexed to the deposition of Chapman Yates," together with translations of Exhibits 7, 8, 9, 10.)

CHAPMAN YATES.

Sworn to and subscribed before me, this 30th day of January, A. D. 1858.

{ SEAL }

CUTLER McALLISTER,
U. S. Commr.

Filed Sep. 6, 1858,

W. H. CHEVERS,
Clerk.

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OFFER OF EVIDENCE.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
v.
ANDREAS CASTILLERO.

U. S. Dist. Ct. 420.
L. C. 366.

Attorney for the United States offers in evidence in the above cause the following documents:

"Espediente and Grant, (and Translation) of Justo Larios."

"Espediente of José R. Berreyesa."

"Translation of Espediente of José R. Berreyesa."

Translation of "R. No. 1."

Translation of "R. No. 2."

"Translation of R. No. 9, annexed to the deposition of H. C. Melone."

"Translation of A. P. L., annexed to deposition of Sufiol, Noriega and Lewis."

"Translation of G. M. Y. annexed to the deposition of Geo. M. Yoell."

"Translation of J. W. W. annexed to the deposition of J. W. Weekes."

SAN FRANCISCO, Jan. 30, 1858.

CUTLER McALLISTER,
U. S. Commr.

Filed Jan. 30, 1858.

W. H. CHEVERS,
Dep. Clerk.

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Espediente promovido por el ciudadano Justo Larios en solicitud del parage conocido con el nombre de Cañada de los "Capitancillos."

1842.

294.

Sello tercero Dos Reales.

Habilitado provisionalm^te^ por la Aduana maritima del puerto de Monterey, en el departamento de las Californias para los años de mil ochocientos cuarenta y mil ocho cientos cuarenta y uno.

ANTONIO MA. OSIO.

ALVARADO.

SEAL

Rehabilitado por la misma para el año de mil ocho cientos cuarenta y dos.

ANTONIO MA. OSIO.

ALVARADO.

Sōr Prefecto del 1^rs^ Distrito:

Monterey 10 de Junio de 1842. Habiendose arreglado los linderos por el prefecto y Juez de Paz de este lugar del terreno que pretende el interesado estienda se el correspondence decreto de concesion.

Justo Larios ante V. S. con el debido respecto dice q^e^ haviendo comprado a Leandro Galindo una casa q^e^ tenia situado en el parage conocido con el nombre de la Cañada de los Capitancillos, me cedio el derecho q^e^ tenia al terreno p^r^ consecion del Y. A. del P. de S. José Guadalupe como consta en el esped^te^ que presenté en el año de 1836 al E. J. Gobernador é igualm^te^ en otro q^e^ presente el año de 40 al Sōr D. Jose Maria Villa, en cargado entonces de la prefectura de 1er Distrito y como ambos espedientes han sido p^r^ desgracia estraviados, suplico a. V. S. se digne admitir este y conceder me el terreno q^e^ solicito y hoy poseo desde el año de 1836, declarandome la propiedad. Los limites de dthō sitio, son desde los linderos de Sta Clara hasta el Corral llamado del finado Macario. Por tanto, A. V. S. suplico se digne acceder a esta mi peticion en lo q^e^ recibire gracia y merced. A compaño a V. el diseño del sitio q^e^ pretendo.

Monterey, Junio 15 de 1842.

EL SUPLICANTE.

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Sello tercero, dos Reales.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocietos cuarenta y uno.

ANTONIO MA. OSIO.

ALVARADO.

SEAL

Rehabilitado por la misma, para el año de mil ochocientos cuarenta y dos.

ANTONIO MA. OSIO.

ALVARADO.

Monterey 16 de Junio de 1842.

Vista la peticion con que da principio este Espediente el avenimiento q^{e} tuvieran los colindantes Justo Larios y José Reyes Berreyesa con presencia del Prefecto y Juez de Paz. de este lugar, con todo lo demas que se tuvo presente y ver convenio de conformidad con las leyes y reglamentos de la materia declaró al mencionado Justo Larios dueño en propriedad de una parte del terreno nombrado Cañada de los Capitancillos, colindante con la Sierra, con el arroyo seco por la parte del establecimiento de Sta Clara y con el Rancho del Ciudadano José Reyes Berreyesa, el cual tiene por lindero el angulo que forma el arroyo seco y el de las Alamitos rumbo al Sur la falda de la loma, cituada en el centro de la Cañada asia el Este y hasta llegar á la Sierra. Librese el correspondiente despacho tomese razon en el libro respectivo y dirijase este Esped^{te} á la Exma Junta departamental para su aprobacion. El Señor Du. Juan B. Alvarado. Gobernador constitucional del departamt^{o} de Californias asi lo mando, decreto y firmo de que doy fe.

Juan B. Alvarado, Gobernador constitucional del departamento de las Californias. Por cuanto el C^{no} Justo Larios ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de los Capitancillos, colindante con la Sierra, con el arroyo seco p^{r} la parte del Establecimiento de Sta Clara y con el Rancho del ciudadano José R. Berreyesa el cual tiene por lindero el Angulo que forma el arroyo seco y el de las Alamitos, rumbo al Sur la falda de la

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Loma situada en el sentro de la Cañada asi al
Sierra, practicadas previamt^e las diligencias
cernientes segun lo dispuesto por leyes y regl
Usando de las facultades que son me conferid
cion Mejicana he venido en concederle el terre
randole la propiedad de el p^r las presentes l
aprobacion de la Exma Junta Departamenta
siguientes. 1^a. Podra cercarlo sin perjudicar l
servidumbres los disfrutará libre y esclusivamer
ó cultivo q^e mas le acomode pero dentro de u
estara habitada. 2^a. Solicitará del Juez respec
juridica en Virtud de este Despacho por el
linderos en cuyos limites pondra a mas de l
arboles frutales ó silves.res de alguna utilidad
que se hace mencion es de un sitio de gan
menos segun esplica el diseño que corre en
El Juez que diere la posecion lo hara á medir
quedando el sobrante que resulte a la nacion p
convengan. 4^a. Si contraviniere a estas c
derecho al terreno y sera denunciable p^r ot
mando q^e teniendose por firme y valedero este
el en el libro sobre adjudicaciones de Terrenos
al enteresado para su resguardo y demas fines.
Dado en Monterey á 1° de Agto. de 1842.

TRANSLATION OF ESPEDIENTE OF

Espediente presented by the citizen Justo L
place known by the name of the

" Cañada de los Capitancill

1842.

294.

Third Seal. Two reals.

Authorized provisionally by the Maritime C
of Monterey, in the Department of the Californ
and 1841.

ANTO

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Ad. Maria de Mont.

Authorized again by the same for the year 1842.

ANTONIO MARIA OSIO.

Monterey, 16th June, 1842. The boundaries of the land which the petitioner asks having been regulated by the Prefect and Justice of the Peace of this place, let the proper decree of concession be issued.

To the Prefect of the 1st District:

I, Justo Larios respectfully say that having purchased from Leandro Galindo a house which he had situated at the place known by the name of the Cañada de los Capitancillos, he conveyed to me all the right which he had to the land by the concession of the Ylustrissimo Ayuntamiento of the Pueblo of San Jose Guadalupe as appears on the record of proceedings (Espediente) which I presented in the year 1836 to his Excellency the Governor, and also in the other which I presented in the year 1840 to Don José Maria Villa, then Prefect of the 1st District, and as both records (Espedientes) have been unfortunately lost, I pray your Excellency to receive this and grant me the land which I solicit, and which I have possessed since the year 1836, declaring it my property. The limits of said tract are from the boundaries of Sta. Clara to the corral called the corral of the late Macario.

Wherefore, I beseech Your Excellency to grant this my petition whereby I shall receive favor and reward. I herewith present to Your Excellency the map of the tract for which I ask.

THE PETITIONER.

MONTEREY, June 16th, 1842.

Third Seal. Two reals.

Authorized provisionally by the Maritime Custom House of the port of Monterey in the Department of the Californias for the years 1840 and 1841.

ANTONIO MARIA OSIO.

Ad. Maria de Mont.

Authorised again by the same for the year 1842.

ALVARADO. ANTONIO MARIA OSIO.

MONTEREY, 16th June, 1842.

In view of the petition with which this Espediente begins, the settlement which the citizens Justo Larios and Jose R. Berreyesa had in the presence of the Prefect and Justice of the Peace of this place and

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everything else relating thereto, in conformity with the laws and regulations on the subject I declare the said Justo Larios owner in full property of a part of the land called Cañada de los Capitancillos, bounded by the Sierra, by the Arroyo Seco on the side of the Establishment of Santa Clara, and by the Rancho of the citizen José Reyes Berreyesa, which has for boundary a line commencing at the angle formed by the junction of the Arroyo Seco and the Arroyo de los Alamitos, thence southward to the Sierra passing by the Eastern base of the small hills situated in the centre of the Cañada. Let the proper decree be issued and registered in the proper book, and let this record of proceedings (Espediente) be forwarded to the Departmental Assembly of the Californias. So ordered, decreed and subscribed; to all which I certify.

Juan B. Alvarado, Constitutional Governor of the Californias. Whereas, the citizen Justo Larios has asked for his own benefit and that of his family, the land known by the name of the Capitancillos, bounded by the Sierra, by the Arroyo Seco on the side of the Establishment of Sta. Clara, and by the Rancho of citizen Jose R. Berreyesa which has for boundary a line running from the junction of the Arroyo Seco and Arroyo de los Alamitos Southward to the Sierra passing by the Eastern base of the small hill situated in the centre of the Cañada, the necessary steps having been taken and enquiries made according to the laws and regulations on this subject, by virtue of the powers conferred upon me in the name of the Mexican Nation, I have granted him the said land, declaring it his property by these presents, subject to the approval of the Departmental Assembly, and to the following conditions:

1st. He may enclose it without injury to the passes, roads and servitudes, he may enjoy it freely and exclusively, using or cultivating it as may best suit him, and within one year he shall build a house and it shall be inhabited.

2d. He shall solicit the proper Judge to give him Juridical possession in virtue of this decree, by whom the boundaries shall be marked out, and he shall put on the boundaries in addition to the landmarks some fruit trees or useful forest trees.

3d. The land herein referred to is one league of the large size, a little more or less, as is explained by the map accompanying the Espediente. The Judge who shall give the possession shall have it measured in conformity to law, leaving the surplus which remains to the nation for the purposes which may best suit it.

4th. If he should violate these conditions, he shall lose his right and liable to be denounced by another.

Wherefore, I order that this title being held firm and valid shall be

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registered in the book of adjudications of vacant lands and delivered to the person interested for his protection and other purposes.

Given in Monterey the 1st of August, 1842.

GRANT ANNEXED TO DEPOSITION OF ANTONIO SUÑOL.

Sello primero seis pesos. Habilitado por la Aduana Maratima de Monterey para los años de 1842 y 1843.

ALVARADO. ANTONIO MARIA OSIO.

{ *Seal.* } Juan B. Alvarado Gobernador Constitutional del departamento de los Californias. Por cuanto el ciudadano Justo Larios ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de las Capitancillos, colindante con la Sierra con el Arroyo Seco, por la parte del establecimiento de Sta. Clara y con el Rancho del Ciudadano José R. Berreyesa el cual tiene por lindero el angulo que forma el arroyo Seco y el de los Alamitos rumbo al Sur la falda de la Loma cituada en el sentro de la Cañada acia el Este, hasta llegar á la Sierra, practicadas previamt[e] las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras. Sugetandose a la aprobacion de la Exma. Junta Departamental y bajo las condiciones siguientes. 1[a]. Podra sercarlo sin perjudicar las travecias, caminos y servidumbres lo disfrutara libre y esclusiv amt[e] destinandolo al uso o culto que mas le acomode pero dentro de un año fabricara casa y estara habitada. 2[a]. El terreno de que se hace mencion es de un sitio de ganado mayor poco mas o menos segun esplica el diseño qu ecorre en el espedt[e] respectivo. El Juez que diere la posecion lo hara medio conforme a Ordenanza, quedando el sobrante que resulte a la Nacion para los usos convenientes. 3[a]. Solicitara del Juez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra las correspondientes mojoneras. 4[a]. Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro. En consecuencia mando que teniendose por firme y valadero el presente titulo se tome razon en el libro a que corresponde y se entregue al

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interesado para su resguardo y demas fines. Dado en Monterey a 1ª de Sepbre, de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.

Queda tomada razon de este deapacho en el libro de acientos sobre adjudicaciones de terrenos valdios á foja.

Exmo Sor. Gobernador has dispuesto se tome razon de esta concesion en la Prefectura del 1er. Distrito.

TRANSLATION OF GRANT.

First Seal. Six dollars.

Authorized by the Maritime Custom House of Monterey, for the years of 1842 and 1843.

ALVARADO. ANTONIO MARIA OSIO.

Maratime Custom House of Monterey. Seal.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas, the citizen Justo Larios has asked for his own benefit and that of his family, the land known by the name of the Capitancillos, bounded by the Sierra, by the Arroyo Seco on the side of the Establishment of Sta. Clara, and by the Rancho of the citizen José R. Berreyesa which has for boundary a line running from the junction of the Arroyo Seco and Arroyo de los Alamitos Southward to the Sierra, passing by the Eastern base of the small hill situated in the centre of the Cañada, the necessary steps having been taken, and enquiries made according to the law and regulations on the subject, by virtue of the powers conferred upon me in the name of the Mexican Nation, I have granted him the said land, declaring it his property by these presents, subject to the approval of the Departmental Assembly and to the following conditions:

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1st. He may enclose it without injury to the passes, roads and servitudes, he may enjoy it freely and exclusively, using or cultivating it as may best suit him, but within one year he shall build a house and it shall be inhabited.

2d. The land herein referred to is one league of the greater size, a little more or less, as is explained by the map accompanying the Espediente. The Judge who shall give the possession shall have it measured in conformity to law, leaving the surplus to the nation which remains for the purposes which may suit it.

3d. He shall solicit the proper Judge to give him Juridical possession in virtue of this Decree, by whom the boundaries shall be marked out, and upon which he shall put the proper land marks.

4th. If he should violate these conditions he shall lose his right to the land and it shall be open to be denounced by another.

Wherefore, I order that this title being held firm and valid shall be registered in the proper book, be delivered to the grantee for his protection and other purposes.

Given at Monterey the 1st of September, 1842.

JUAN B. ALVARADO.

This is recorded in this office in the Book of Entries of Adjudications of vacant lands page.

His Excellency the Governor has ordered that this grant be recorded in the Prefecture of the 1st District.

[Here follows diseño.]

Filed, January 30th, 1858.

W. H. CHEVERS,
Dep. Clerk.

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ESPEDIENTE OF JOSE R. BERREYESA.

Espediente Promovido por el Ciudadano José Reyes Berreyesa en solicitud del parage nombrado la Cañada de los Capitancillos.

293.

Espediente promobido, pr. el Ciudadano Jose R. Berreyesa, en solicitud del parage, nombrado Cañada de las Capitancillos.

Monterey Junio 6. de 1841. EXMO. SR.

Ynforme el Juez de Paz del Pueblo de Sn José ALVARADO. El ciudo. Jose R. Berreyesa, Vecino del Pueblo de. S. José Guadalupe; ante V. E. como mas haya lugar, y el derecho le permite, se presenta y dice: qe. ya hace el dilatado tiempo, de mas de ocho años, qe se haya radicado en el parage nombrado S. Vicente, Cañada de los Capitancillos; cuyo parage le fue concedido oficialmente, pr. el finado Sr. Grāl. D. Jose Figueroa, en el qe. ha subcistido, hasta la fha, con su muy numerosa familia; y aunque á pesar, de haver hecho varias instancias, en solicitud de obtener el titulo correpondte. pa asegurar su legitima propiedad, no ha podido htā ahora lograré esta satisfacion; cuya demora á dado lugar, a qe su colindante Justo Larios, haya tumbado su casa y plantadola, en el intermedio qe los divida, qe heran como cosa de dos Leguas, poco mas ó menos, con detrimto. del agua, qe le quito al ganado, y lo auyento pa. esa parte; y aun sin embargo de qe. no se debe conciderar este, con tanto derecho, como se lo han sugerido varios seductores enemigos del orden social; qe como vieron qe yo, pretendia se partiesa la diferiencia del terreno, le aconsejaron puciera su casa, en la dicha mediacion, pá. de este modo entorpecer del todo mis intenciones. Por que si hace tres, ó cuatro años qe. se haya subsistrido pr Leandro Galindo, este no hizo mas de vender le la casa, y no el terreno, pa. qe. no se hayaba con derecho pa. ello, y sin embargo, el anda p,a. bender el parage como ya lo vá. averificar; pr. donde se infiere; de qe. no lo nececita, o no tiene mayor interes en el. Ya la ves Sr Exmo. qe. el espresado mi colindante á vsado de esta arvitrariedad (como el mismo me lo dijo) de poner su casa facultimamte. en el intermedio; este sea el lindero qe. nos divida, si V. E. lo tiene abien; pr. qe. el tiene adonde estenderse, qe es. pa. fuera de la cañada, qe a nadie pertenese; y yo no tengo absolutamente a donde alargarme. Mi solicitud á sido siempre de dos sitios, a ahora la hago lo mismo; qe es decir, desde la casa de Justo La-

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rios hasta el matadero, con todas las lomas, q^{e} pertenecen a la dhã cañada. Los derechos q^{e}. en esta parte me pueden favorecer, son 26 años y 4 meses mas, q^{e} servi a la patria, en la carrera militar; desde soldado htã. Sarg^{to}. en que vse. de mi Licencia absoluta, sin nota ninguna como consta p^{r}. ella. Y despues de haver sacrificado, toda mi vida sali al fin, sin pagam^{to}. ninguno perdidos mis averes; y solam^{te}. con once hijos de familia, q^{e}. se hayan actual^{mte} en mi comp^{a} y a mi sombra, y de estos casados cuatro de ellos; y tengo el honor de acompañar a V. E. el diseño: Por tanto.

A. V. E. rendidam^{te} suplico, se digne tener en concideracion todo cuanto dejo espuesto, y ver propicio esta mi suplicatoria de q^{e}. le vivire reconocido.

Rancho de S. Vicente 2 de Junio de 1842

JOSE. R. BERREYESA

En virtud de la orden q^{e} l^{a}. E. se sirvio ordenar me aq^{e} se presentaran en este Juzgado de mi cargo los C. C. Jose Reyes Berreyesa y Justo Larios, presentando los documentos. q^{e} acreditan las solicitudes o propiedad sobre el terreno llamado Cañada de Capitancillos; al efecto, el primero presento el espediente q^{e} antecede, esponiendo tener dos representaciones mas en la Prefectura del Distrito, el segundo fue llamado, y no se presento mas si, adquirir p^{r} Dn. Dolores Pacheco anterior mio, q^{e}. Larios habia presentado un espediente en el año 40, y se halla en dhã Prefectura; se ha dhõ antes, q^{e}. Larios no se habia presentado, y al tiempo de escribir las ultimas lineas se presento y dio la misma razon dada pr. Dn. Dolores Pacheco.

El Sargento Reyes Berreyesa, dijo era conforme con la supuriores disposiciones q^{e} V. E. tubiera á bien disponer.

Pueblo de San José Junio 11. de 1842

ANTONINO BUELNA.

Monterey Junio 13. *de* 1842.

Ynforme la prefectura con presencia de los documentos ó solicitudes a que se refiere el informe del Juez de Paz del Pueblo de Sn. José

ALVARADO

Exmo S. Govr. de este Departam^{to}.

Con el mayor ciudado se ha solicitado en el Archivo de este oficina el espediente de q^{e} hace mencion en su informe el. S. Juez de Paz de Sn. José pertenec^{te}. á D. Justo Larios y no existe; aunque de, el qe promobió el C. José R. Berrelleza, y en vista de estos docum^{tos} del informe del citado Juez, y de la honradez, numerosa familia y buenos servicios del S. Berrellesa, la Pref^{a} de mi cargo opina. q^{e} puede con-

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cederse le el terreno que pretente y consta en el adjunto diceno, sirviendole de limites la casa de D. Justo Larios; mas sin embargo. V. E. resolvera lo q^{e} estime mas en justicia.

Protesto á V. E. las seguridades de mi respeto.

Monterey, Junio 14 de 1842.

JOSE. R. ESTRADA

Monterey Junio 15. *de* 1842.

Conose traslado a la parte de Justo Larios para que a lo que cuanto crea conveniente a sus derechos justificando al mismo tiempo conforme á la ley los meritos y servicios echos a la patria.

ALVARADO

Monterey Ag^{to} 1° *de* 1842.

Haviendo convenido la parte de Larios y dé Berreyesa estar conformes con los linderos denunciados en el diceño adjunto y en virtud de estar ocupando y cultivando el terreno este p^{r}. algun tiempo, espidare se el titulo correspondiente

ALVARADO

Monterey 20 *de Ag^{to} de* 1842.

Vista la peticion con que da principio este espediente los informes que preseden con todo lo demas que se tubo presente y ver semovino declaro en conformidad a las leyes respectivas dueno en propiedad el Ciudadano Jose R. Berreyesa, de una parte el parage nombrado Cañada de los Capitancillos, colindante al Norte con las Lomerias bajas inmediatas al plan del Pueblo de San José, al Sur con la Sierra, al Oriente con las Lomerias del Laurel, y al. Poniente con el rancho del ciudadano Justo Larios el cual tiene por lindero el angulo que forma el Arroyo Seco y el de los Alamitos la falda de la Loma cituada en el sentro de la Cañada y la Sierra. Librese el correspond^{te}. despacho tomese razon en el libro respectivo y dirijase este esped^{te}. a la Exma Junta Departamental para su aprobacion.

El Sor. Don Juan B. Alvarado. Gobernador Constitucional de las Californias as lo probeyo mando y firmó.

Exmo. Senor

Los litigantes C. C. José Berreyesa y Justo Larios han convenido ante mi en que los linderos de ambos al rumbo del E., segun de mues

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tra el diseño de Berreyesa, sea tirando una recta desde el angulo que forma el arroyo de los Alamillos, con el seco, rumbo al S. la falda de la loma situada en el centro de la Cañada, hacia el E. y hasta llegar a la Sierra; de manera que segun el espresado diseño que parece mas esacto, la repitida linea viene a ser una paralela que yo he demarcado con puntos para el conocimiento de V. E.

Con la que han quedado aquietados y conformes.

Monterey 16. de Junio de 1842.

JOSE. Z. FERNANDEZ.

(Here follows diseño.)

Juan. B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el Ciudadano José Reyes Berreyesa ha pretendido para su beneficio personal y el de su familia una parte del parage nombrado Cañada de los Capitancillos; colindante al Norte con las Lomarias bajas inmediatas al plan del Pueblo de Sn. José, al Sur con la Sierra, al Oriente con las Lomerias del Laurel, y al Poniente con el Rancho del Ciudadano Justo Larios el cual tiene por lindero el angulo que forma el arroyo seco y el de los Alamitos rumbo al Sur, la falda de la loma situada en el centro de la Cañada asi al este hasta llegar á la Sierra: practicadas previamente las diligencias y aberiguaciones consernientes segun lo dispuesto por leyes usando de las facultades que me son conferidas a nombre de la Nacion Mejicana hé venido en concederle el terreno mencionado declarandole la propiedad de el por los presentes letras, sugeto a la aprobacion de la Exma Junta Departamental y a las condiciones siguientes.

1ª. Podra sercarlo sin perjudicar las travecios, caminos y servidumbres, lo disfrutará libre y esclusivamente distinandolo al uso q°. cultivo que mas le acomode, pero dentro de un año fabricará casa y estara habitada.

2ª. Solicitará del Juez respectivo que le de posecion juridica en virtud de este despacho p°. el cual se demarcaran los linderos en cuyos limites pondrá amas de las mojoneras algunos arboles frutales ó cilvestres de alguna utilidad.

3ª. El terreno de que se hace mencion, es de un citio de ganado mayor poco mas ó menos segun explica el diceño que corre en el Exped^te. respectivo.

El Juez diese la posecion lo hara medir conforme a ordenanza que-

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dando el sobrante que resulte á la Nacion para los usos que mas le conbengan.

4ª. Li contrabiniese a estas condiciones perdera su derecho al terreuo y será denunciable por otro.

En consecuencia mando que tienendose por firme y valedero este titulo se tome rason de el en el Libro a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á Veinte de Agosto de mil ochocientos cuarenta y dos.

Monterrey Feby. 15 de 1844.

EXMO. SR.

Ynfa. el S. Srio. del Despacho.

MICHELTA.

El. C. José R. Berreyesa. Vecino del Pueblo de S. José Guadc. ante V. E. como mas haya lugar, y el derecho le permite, se presenta y dice: que hace ya el tiempo de diez años. qe. se haya radicado y establecido con su numerosa familia en este su rancho de S. Vicente—Cañada de los Capitancillos; y desde aquella fhā no ha omitido diligencia alguna pª. poder conseguir su despacho ó un titulo qe. le asegure su legitima propiedad pr. que. aunque en el año anterior de quarenta y dos, recivio un titulo espedido pr. el Sr. D. Juan B. Alvarado. pero como no hera conforme al Espediante qe. presente a la Superioridad a causa de qeme sugetaba a un sitio puramente: siendo asi, qe. desde un principio siempre ha sido mi solicitud de dos sitios pª. ganado mayor, y qe. actualmte. los tengo ocupados como es constante y verifico con la cantidad de seiscientas reses: y pr. esta causa no pude admitir el titulo qe. me mandaron en aquella ves: y fue, yo mismo en persona y so lo debolvi y entregué en sus manos á D. Manuel Gimeno. diciendole la causa pr. qe. no me conformaba con el: y como en aquellos dias fue y susedio la toma de Monterey, yo me retire, y no he podido volver a hio a este negocios tan urgente, pero a hora con ocacion qe. va una persona de mi casa lo hago, pr. medio de este Escrito, suplicando a V. E. si lo tiene a bien, ordemar qe se me estienda y remita mi despacho correspondte. en estos terminos: desde la punta de la lomita asi al poniente, qe. esta en el sentro de la Cañada hasta el plan del Arroyo de las Yagas, entra la cierra, y con todo el Lomerio qe. pertenece a la dicha estrecha Cañada de los Capitancillos, y qe tiene de Longitud. dos sitios, poco mas ó menos, y de latitud un cuarto de Legua, ni en lo mas ancho, que es donde tengo mi casa y subsistencia: Por tanto,

Exmo.

A. V. E. rendidamte. suplico se digne ver propicio esta me suplicatoria, de qe. le vivire reconocido.

S. Vicente 1º. de Febº. de 1844.

JOSE. R. BERREYESA.

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Sr. Gobernador.

Al que representa se le concedio un solo sitio de ganado mayor, como consta en el espedienta respectivo, y si su pretencion es de tener mas estencion, seria conveniente que informasa el Juez del Pueblo de San José con citacion de los colindantes principalmte. con el vecino Justo Larios con quien antes tubo cuestion.

No tengo presente que me haya entregado su titulo el interesado, y ni tenia para qué dejarme ese documento. que tal vez no sabia verdaderamente donde lo puso pero si necesitare un testimonio de la concecion que se le hizo puede presentar el papel sellado que corresponde.

El superior discernimiento de V. E. resolvera lo que crea conveniente.

Monterey Febo. 15 de 1844.

MANL. JIMENO.

Monterey Febo. 16. de 1844.

Como informa el S. Sriō. de mi despacho informe el Juez con citacion de las colindantes y luego q. se evacue aquel vuelva el interesado con el papel respectivo pa. el nuevo titulo.

MICHELTA.

En cumplimto. á lo dispuesto pr. el Superior Govierno en diez y seis de Febo. del presente año hise compareser a Dn. Justo Larios como colindante del terreno de qe. se hase mension en la presedente instansia y hecho presente á este el escrito firmado pr. el interesado, espuso qe. pr. dar su pareser en era presiso premeditar y llegar ante el Govierno. pero en seguida medio una mutua convenasion, y es en la forma qe sigue.

El rincon del arroyo conocido pr. nombre los Alamillos qe. confronta con la punta de la loma servira de lindero á ambas partas y asi quedan sujetos los interesados.

Es cuanto a la vez puedo informar sobre el Particular.

Pueblo de S. José. Mayo. 22. de 1844.

ANTONIO MA. PICO

Exmō Sōr Gobernador

Segun la conformidad del colindante Justo Larios, parece que no hay inconveniente alguno para que se le estienda nuevo titulo

Monterey Julio 15. de '844

MANL. JIMENO

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Monterey Julio 23. *de* 1844.

Espedidase

MICHELT^{o}

Filed Jany 30, 1858.

W. H. CHEVERS,
Dep. Clk.

TRANSLATION OF ESPEDIENTE OF JOSE R. BERREYESA.

"*Espediente*" *presented by the citizen Jose Reyes Berreyesa, petitioning for the place called*

"*Cañada de los Capitancillos.*"

MOST EXCELLENT SIR:

Monterey, June 6th, 1842. The Justice of Peace of the town of San Jose will report. ALVARADO.

The citizen, José R. Berreyesa, resident of the town of San José Guadalupe, before your Excellency, in the most formal manner and as the law permits, presents himself and says, that for the long period of more than eight years, he has been settled in the place called "San Vicente," Cañada de los Capitancillos, which place was officially granted to him by General Don José Figueroa deceased, where he has subsisted up to this time with his very numerous family and notwithstanding many efforts made by him in endeavoring to obtain the corresponding title, to ensure his legitimate possession, he has not been able up to enjoy that satisfaction: the delay has given room to the occupant of the land adjoining, one Justos Larios, to remove his house and set it in the intermediate space which separated them and which was in extent about two leagues, little more or less, doing damage thereby in diverting the water from the cattle and driving it away from that place; and even notwithstanding he should not consider himself as having so much right as has been suggested to him by sundry corrupt persons, enemies of social order, who when they saw that I proposed to divide the difference of the land, advised him to place his house in the said intermediate space, so as in this way completely to frustrate my intentions. For it is three or four years that he has been the substitute of Leandro Galindo, this latter person did nothing more than sell him the house, and not the land, for he had no right to do that, and nevertheless he goes about trying to sell the place, and is really about to accomplish his purpose; from which it is to be inferred, that he does not need it, or takes no great interest in it. And at the same time most Excellent

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Sir, that my aforesaid neighbor has proceeded so arbitrarily (as he himself told me) to place his house by authority in the intermediate space; let this be the boundary between us, if Your Excellency deems proper, for he has room to extend on the (land) outside of the valley which belongs to nobody and I absolutely have nowhere to enlarge.

My petition has always been for two "sitios" (leagues) and I now make it for the same; namely from the house of Justo Larios up to the slaughtering place with all the hills that belong to said valley. The rights which in relation hereto may avail me, are, twenty-six years and four months more, that I served the country in the military career, from private to sergeant, when I obtained my absolute discharge without imputation whatsoever, as thereby shown, and after sacrificing all my lifetime I left at last without any pay, my property lost, and only with eleven children of the family who are at this present time in my company and under my care, and of these, four married. And I have the honor to present to your Excellency herewith the respective map (diseño.)

Therefore I humbly pray Your Excellency may be pleased to take into consideration all that I have set forth and favorably regard this my petition, for which I shall be thankful.

Rancho of San Vincente, 2d June, 1842.

In virtue of the order which Your Excellency was pleased to send me, that the citizens Jose Reyes Berreyesa and Justo Larios should appear in this tribunal under my charge, presenting the documents which may accredit the petitions or ownership concerning the land called "Cañada de Capitancillos;" in pursuance thereof the first presented the foregoing "expediente" making known that he had two other memorials in the prefecture of the district; the second was called and did not present himself; but I ascertained through Don Dolores Pacheco, my predecessor, that Larios had presented an "espediente" in the year 40, and it is in said prefecture. It has been said hereinbefore that Larios had not presented himself, and at the time of writing the last lines, he appeared and gave the same account given by Don Dolores Pacheco.

The Sergeant Reyes Berreyesa said he submitted to the superior disposition which your Excellency might deem proper to make.

Town of San José, June 11th, 1842.

ANTONINO BUELNA.

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MONTEREY, June 13th, 1842.

The prefecture will report having present the documents or petitions to which the Communication of the Question of Peace of the Town of San Jose refers.

ALVARADO.

MOST EXCELLENT GOVERNOR
of this Department.

The "espediente" belonging to Don Justo Larios of which the Justice of Peace of San Jose makes mention in his report, has been sought for in the archive of this office with the greatest care and does not exist. There appears however that which was presented by the citizen Jose R. Berreyesa, and in view of these documents, of the report of the aforesaid judge and of the honesty, numerous family and good services of Señor Berreyesa, the prefecture of my ministration is of opinion that the land which he solicits and which is described in the annexed map (diseño) may be granted to him, the house of Don Justo Larios serving as boundary. Nevertheless, your Excellency will resolve whatsoever you esteem to be most in accordance with justice.

I offer your Excellency the assurances of my respect.

Monterey, June 14th, 1842.

JOSE R. ESTRADA.

MONTEREY, June 15th, 1842.

Deliver a copy of proceedings to Justo Larios, so that he may allege whatever he thinks important to his rights, justifying at the same time according to law, the merits and services done to the County.

ALVARADO.

MONTEREY, August 1st, 1842.

The parties Larios and Berreyesa having agreed to conform to the boundaries denounced (shown) in the annexed map, (diseño) and in consideration of this land being occupied and cultivated for some time, let the corresponding title be issued.

ALVARADO.

MONTEREY, 20th August, 1842.

In view of the petition with which this "espediente" was begun, the foregoing reports, with all other matters known and proper to be considered in conformity with the respective laws, I declare the citizen Jose R. Berreyesa owner in property of a part of the

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place called "Canada de los Capitancillos," bounded on the north by the low hills (lomerias bajas) in the vicinity of the plain of the Town of San Jose, on the South by the mountain range (la Sierra), on the East by the hills of the "Laurel (laurél) tree, (lomerias del laurel), and on the West by the "rancho" of the citizen Justo Larios, which has for boundary the angle formed by the dry creek (arroyo seco) and that of the "Alamitos" (little poplars), the base of the low hill (la falda de la loma) situated in the centre of the valley (Cañada) and the mountain range (La Sierra.) Let the corresponding decree (despacho) be issued, a register thereof made in the respective book and the "espediente" be directed to the most Excellent Departamental Junta for its approval.

Don Juan B. Alvarado, Constitutional Governor of the Californias so provided, ordered and signed.

MOST EXCELLENT SIR:

The litigants citizens Jose Berreyesa and Justo Larios have agreed before me that the boundaries of both in the direction of East, as shown in the map (diseño) of Berreyesa, shall be drawing a straight line from the angle which the arroyo (creek) "alamitos" forms in the dry creek (arroyo seco) direction southward, the Eastern base of the low hill (loma) situated in the centre of the valley (Cañada) and until reaching the Sierra (Mountain.) So that according to the diseño (map) which appears more exact, the said line becomes a parallel which I have marked with dots for the knowledge of your Excellency.

With which they have rested satisfied and conformable:

Monterey, 16th June, 1842.

JOSE Z. FERNANDEZ.

(Here follows the diseño.)

JUAN B. ALVARADO, Constitutional Governor of the Department of Californias.

Whereas the citizen José Reyes Berreyesa has solicited for his personal benefit and that of his family a part of the place called "Cañada de los Capitancillos," bounded on the north by the low hills (lomerias bajas) in the vicinity of the plain of the Town of

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San Jose, on the south by the mountain (Sierra), on the east by the Laurel tree hills (lomerias del laurel), and on the west by the "rancho" of the citizen Justo Larios which has for boundary the angle which the arroyo seco (dry creek) forms with that of the "alamitos" (little poplars), direction southward; the eastern base of the low hill situated in the centre of the valley (Cañada) until reaching the Sierra (the mountain), the necessary proceedings and inquiries thereto having been made in accordance with the laws; in the exercise of the powers which are conferred upon me in the name of the Mexican Nation, I have granted to him the said land, declaring it to be his property by these presents, subject to the approval of the most Excellent "Junta Departamental" and to the following conditions:

1st. He can enclose it without detriment to the crossings, roads and servitudes; he can enjoy it freely and exclnsively, appointing it to the use or culture that he pleases, but within one year he shall build a house, and it shall be inhabited.

2d. He shall apply to the respective Judge to give him judicial possession in virtue of this decree, by whom the boundaries shall be marked, on which, in addition to the land marks, he shall place some fruit trees or forest trees of some utility.

3d. The land of which mention is made, is one "Sitio de ganado mayor" (one league), a little more or less, as shown in the diseño (map), which is placed in the respective "expediente." The Judge who gives the possession will cause it to be measured according to regulation, leaving the surplus which remains to the nation for the uses which may be found most convenient.

4th. If he violates these conditions, he will lose his rights to the land, and it will become subject to denouncement by another.

Therefore I order that this title being held firm and valid, be registered in the corresponding book, and delivered to the party interested for his safe guard and other purposes.

Given at Monterey, the twentieth of August, eighteen hundred and forty-two.

MOST EXCELLENT SIR:

The citizen Jose R. Berreyesa, resident of the Town of San Jose Guadalupe, before your Excellency as may be most formal and as the law permits, presents himself and says: That it is now ten years since he has been settled and established with his numerous family in this his "rancho" of "San Vicente," cañada de los Capitancillos, and since that date he has not omitted any measure, in

Monterey, Feb. 15th, 1844. The Secretary of the office will report. (signed) MICHELTORENA.

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order to obtain his patent (despacho) or a title which may ensure to him his legitimate ownership, for although in the proceeding year of forty-two he received a title issued by Don B. Alvarado, yet as it was not in conformity with the "espediente," which he presented to the superior authority, inasmuch as it limited me to one "sitio" only, while from the first my petition was for two "sitios" for horned cattle (ganado mayor) which I already have in occupation, as is shown and verified by me, with the number of six hundred head (reces); for this cause I could not admit the title which was sent to me at that time; and I went myself in person and returned it, and gave it into the hands of Dn. Manuel Gimeno, telling him the reason why I was not satisfied with it, and as the capture of Monterey happened about that time, I retired and have not been able to proceed again in this matter so urgent, but now by a person going from my house, I avail myself of the occasion to do so through this writing, praying your Excellency may be pleased to order that the corresponding decree (despacho) be made out and remitted to me in these terms, from the point of the little hill (lomita) towards the West, which is in the centre of the valley (cañada) to the plain of the (arroyo de las Llagas) rivulet of the "Llagas" among the mountains (Sierra), and with all the hill country (lomesio) which pertains to said narrow valley of the "Capitancillos," and which contains in length two "sitios," a little more or less, and in breadth it has not a quarter of a league in the widest part even, which is where I have my house and subsistence.

Therefore I humbly pray your Excellency to be pleased favorably to receive this my petition, for which I will ever be grateful.

San Vicente, 10th February, 1844.

JOSE R. BERREYESA.

Mr. Governor:

There was granted to the applicant one "sitio de ganado mayor" only, as is seen by the respective "expediente," and if his petition is to have a greater extent, it would be well that the Judge of the Town of San Jose should report, with citation of the adjacent occupants, especially the neighbor Justo Larios, with whom he has had heretofore a dispute.

I do not recollect that the party interested delivered his title (tomo), neither had he a motive for leaving me that document; perhaps he does not truly know where he placed it, but if he should need a testimony of the grant which was made to him, he can present the corresponding stamped paper.

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The superior discernment of your Excellency will determine what may be proper.

Monterey, 15th February, 1844.

MAN^{L} JIMENO.

MONTEREY, February 16th, 1844.

As recommended by the Secretary of my office, let the Judge report, with citation of the adjoining occupants, and so soon as that is disposed of, the party interested will return with the respective paper for the new title.

(Signed) MICHELTORENA.

In fulfilment of the disposition of the Superior Government of the sixteenth of February of the present year, I caused Don Justo Larios as an occupant of the adjoining land of which mention has been made in the proceeding instance, to appear and making him acquainted with the writing presented by the party interested, he alleged that in order to give his opinion it was necessary that he should think over it and go before the Government, but afterwards he gave me a mutual agreement, and it is in the following form: The "Angle" (corner, rincon) of the rivulet (arroyo) known by the name of los Alamitos which faces the point of the hill (loma), shall serve for boundary to both parties, and to this both parties are agreed.

This is all that I can at the time inform about the matter.

Town of San Jose, May 22d, 1844.

ANTONIO MARIA PICO.

MOST EXCELLENT GOVERNOR:

According to the assent of Justo Larios adjoining, there appears to be no objectson to the extending a new title to him (the applicant.)

Monterey, July 15th, 1844.

(Signed) MANUEL JIMENO.

MONTEREY, July 23d, 1844.

Let it be issued.

(Signed) MICHELTORENA.

Filed Jan'y 30th, 1858.

W. H. CHEVERS, Dep. Clerk.

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TRANSLATION OF "R. No. 1." [See Page 257.]

Filed 8 o'clock, P. M., 18 January, 1851.
(Signed) J. T. RICHARDSON,
Recorder S. C. C.

"The above is written in pencil."
(Signed) S. A. CLARK,
Recorder.
By Geo. M. Yoell,
Deputy.

Possession of the Mine of Santa Clara, year 1845.

TRANSLATION OF JOSE CASTROS'S PETITION.

Señor Alcalde of 1st Nomination of the Pueblo of San José de Guadalupe:

Pueblo de S. Jose G. June 27, 1846. Let this be included and archived as the party requests. PACHECO.

I, José Castro, Lieutenant Colonel of Cavalry in the Mexican Army, a native of this Department, before your notorious justification (notoria justificacion) appear and say: That representing at present the person and rights of Captain D. Andres Castillero, and other individuals who compose the company (I being one of the shareholders) in the Quicksilver mine which the said Señor Castilleros denounced on the third day of December one thousand eight hundred and forty-five, and of which possession was given us on the thirtieth of the same month and year, in strict conformance with the laws of mining, title sixth, article first, which grants to discoverers of new mines three *pertenencias* contiguous or disconnected of the dimensions designated by law, and as accords with its rights, the company claims now, as a matter of course (dá hóy por deducidas) before you, the three *pertenencias* in continuation of the first, it being proper that this petition should be attached to the *expediente* of the denouncement, so that it may remain among the archives and appear through all time.

Not going on paper with proper seal, because there is none; I pray that I may receive favor and justice.

Santa Clara, June 27, 1846.

JOSÉ CASTRO.

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TRANSLATION OF PETITION OF A. CASTILLERO.

Señor Alcalde of 1st Nomination:

Andres Castillero, Captain of permanent Cavalry and at present a resident of this Department, before your notorious justification makes representation: That having discovered a vein of silver with alloy of gold on the land of the rancho pertaining to José R. Berreyesa, retired Sergeant of the presidial company of San Francisco, and wishing to work it in company, I request that, in conformity with the mining ordinances, you will be pleased to fix up notices in the public places of the Jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

Mission of Santa Clara, November 22d, 1845.

ANDRES CASTILLERO.

TRANSLATION OF PETITION OF A. CASTILLERO.

Señor Alcalde of 1st Nomination of the Pueblo of San José Guadalupe:

I, Andres Castillero, Captain of permanent Cavalry, before your notorious justification appear and say: That on opening the mineral, which I previously denounced in this Court, I have taken out besides silver with alloy of gold, liquid quicksilver, in the presence of some bystanders, whom I may be able to summon on the proper occasion. And considering it necessary to my right, I have to request of you, that united to the document of denouncement, this representation may be recorded, it not going on stamped paper because there is none. I pray you to provide in conformity, in which I will receive favor and justice

Santa Clara, December 3d, 1845.

ANDRES CASTILLERO.

TRANSLATION OF "ACT OF POSSESSION."

There not being found in the Department of California a mining deputation, and this being the only time since the settlement of Upper

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California that a mine has been worked in conformity with the laws, and there being likewise no professional Judge ("Juez de Letras") in the second District, I, the Alcalde of 1st Nomination, citizen Antonio Maria Pico, have come accompanied by two assisting witnesses, resolved to act by virtue of my office, for want of a Notary Public, there being none, in order to give juridical possession of the mine known by the name of Santa Clara, in this Jurisdiction, situated on the Rancho of the Sergeant José Reyes Berreyesa, because the time having expired, which the mining ordinance designates for the citizen Andres Castillero to show his right, and also for others to allege a better right from the time of the denouncement to this date, and the said mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the elaboration of the mine producing abundance of liquid quicksilver, as shown by the specimens which this Court has, and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have concluded to grant him three thousand varas in all directions, subject to that which the general mining ordinance indicates; it being worked in company, to which I certify, the witnesses signing with me; and this act of possession remaining aggregated to the rest of the expediente, which remains deposited in the archives of my charge. Not being done on the respective stamped paper, there being none as prescribed by law.

Juzgado de San José Guadalupe, December one thousand eight hundred and forty-five.

(Signed) ANTONIO MA. PICO,
of assistance of assistance
ANTONIO SUÑOL, JOSÉ NORIEGA.

Recorded (at request of J. Alex. Forbes) at 12 o'clock, M., March 16th A. D. 1855, in Book G. of Deeds, on pages 484, 485 and 486, Records of the County of Santa Clara.

(Signed) S. A. CLARK,
County Recorder.
By F. Lewis,
Deputy.

Filed February 25th, A. D. 1853, at 11 o'clock A. M.

(Signed) J. M. MURPHY,
Recorder.
By S. O. Houghton,
Deputy.

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RECORDER'S OFFICE, SANTA CLARA COUNTY, CALIFORNIA, August 29th, A. D. 1857.

I hereby certify that the foregoing on pages 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of this contains a true, correct and exact traced copy of an original Document now on file in this office, and which said Document is recorded in Book G. of Deeds, pages 484, 485 and 486.

SEAL

Witness my hand and official seal, at office in the City of San José, this the day and year last above written.

(Signed) S. A. CLARK,
County Recorder.
BY GEO. M. YOELL,
Deputy.

Filed January 30th, 1858.

W. H. CHEVERS,
Dep. Clk.

TRANSLATION OF "R. NO. 2." [See Page 311.]

Expediente of the denouncement, possession, and partnership of the Quicksilver Mine called Santa Clara, jurisdiction of San José de Guadalupe, in Upper California.

TRANSLATION OF ANDRES CASTILLERO'S PETITION.

SENOR ALCALDE OF 1ST NOMINATION:

Andres Castillero, Captain of permanent Cavalry, and at present resident in this Department, before your notorious justification makes representation; that having discovered a vein of silver with a ley of gold, on the land of the rancho pertaining to José Reyes Berreyesa, retired Sergeant of the presidial company of San Francisco, and wishing to work it in company, I request that in conformity with the ordinance on mining, you will be pleased to fix up notices in public places of the Jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

PUEBLO OF SAN JOSÉ GUADALUPE, November 22d, 1845.

ANDRES CASTILLERO.

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This is a copy to which I refer, signing it with two assisting witnesses in the Pueblo of San José Guadalupe, on the 13th of January 1846.

PEDRO CHABOLLA.

Of assistance: P. SANSEVAIN.

Of assistance: JOSÉ SUNOL.

TRANSLATION OF ANDRES CASTILLERO'S PETITION.

SENOR ALCALDE OF FIRST NOMINATION:

I, Andres Castillero, Captain of permanent Cavalry, before your well known justification appear and say, that on opening the mine which I previously denounced in this Court, I have taken out, besides silver with a ley of gold, liquid quicksilver, in the presence of several bystanders, whom I may summon on the proper occasion. And considering it necessary for the security of my right to do so, I have to request of you, that uniting this representation to the denouncement it may be placed on file, it not going on stamped paper because there is none. I pray you to take measures to this effect, in which I will receive favor and grace.

SANTA CLARA, December 3d, 1845.

ANDRES CASTILLERO.

This is a copy, to which I refer, signing it with the witnesses of my assistance, in the Pueblo of San José Guadalupe, on the 13th of January, 1846.

PEDRO CHABOLLA.

Of assistance: P. SANSEVAIN.

Of assistance: JOSE SUNOL.

TRANSLATION OF "ACT OF POSSESSION."

There being no deputation on mining in the Department of California, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws, and there being no "Juez de Letras," (professional Judge) in the second District, I, the Alcalde of First Nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office, for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the

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name of Santa Clara, in this Jurisdiction, situated on the rancho of the retired Sergeant José Reyes Berreyesa, the time having expired which is designated in the ordinance of mining, for citizen Don Andres Castillero to show his right, and also for others to allege a better right, between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this Court has, and as the laws now in force, so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have concluded to grant him three thousand varas in all directions, subject to that which the General Mining ordinance may direct, it being worked in company, to which I certify, the witnesses signing with me, this act of possession remaining aggregated to the rest of the expediente, which remains deposited in the Archives under my charge; not being done on the corresponding stamped paper, there being none as prescribed by law.

COURT OF SAN JOSE GUADALUPE, December 30th, 1845.

(Signed,) ANTONIO MARIA PICO.

Of assistance: Of assistance:

ANTONIO SUNOL. JOSE NORIEGA.

I have received of Don Andres Castillero the sum of twenty-five dollars, on account of the fees, for possession of the quicksilver mine which is in the jurisdiction under my charge. Court House of San José Guadalupe, December 30th, 1845.

ANTONIO MARIA PICO.

TRANSLATION OF "AGREEMENT OF PARTNERSHIP."

Writing of partnership which Don Andres Castillero, Captain of permanent cavalry executes with the Commanding General Don José Castro, and the Messrs. Secundino Robles and Teodoro Robles, and a voluntary grant, which the partners make perpetually to the Rev. Father Friar, José Maria del Refugio Suares del Real, of a mine of silver, gold, and quicksilver, on the rancho of Don José Reyes Berreyesa, in the Jurisdiction of the pueblo of San José Guadalupe.

ARTICLE 1. Don Andres Castillero conforming in all respects to the ordinance of mining, forms a regular perpetual partnership with the said persons in this form. The half of the mine, which is that of which he can dispose, will be divided into three parts, in this manner: four shares to Don José Castro, four shares to the Messrs. Secundino

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and Teodoro Robles, and the other four shares, to the Rev. Father José Maria R. S. del Real, as a perpetual donation.

ART. 2. Neither of the partners can sell or alienate any of his shares, so that he who may do so shall lose his right, which shall revert to the other partners.

ART. 3. The expenses shall be borne in proportion to the shares, a formal account being kept by an accountant, who will be paid from the common fund.

ART. 4. That prescribed by the ordinance of mining being complied with in everything, whatever deficiency may arise shall be decided by the parties themselves.

ART. 5. Don Andres Castillero will direct the labors, expenses and works, and in his absence, the Rev. Father Friar José Maria R. S. del Real.

ART. 6. Of the products, no larger quantities will be taken out, than are necessary for the arrangement of the negotiation until the works shall be regulated; and whatever the quantity may be, it must be with the consent of all the partners, until the negotiation may be arranged.

ART. 7. These agreements will be authenticated by the Prefect of the Second District Don. Manuel Castro, the original document being deposited in the archives of the district (partido) a copy certified by his Honor being left with the persons interested.

MISSION OF SANTA CLARA, November 2d, 1825.

ANDRES CASTILLERO,
For the Commanding General DON JOSE CASTRO.
ANDRES CASTILLERO.
FR. JOSE MARIA DEL R. S. DEL REAL.

For the Señores Secundino Robles, and Teodoro Robles.
FRANCISCO ARCE.

This is a copy of the original to which I refer. Santa Clara, December 8th, 1845.

MANUEL CASTRO.

ANTONIO MARIA PICO.

COURT OF THE JUSTICE OF THE PEACE,
SAN JOSE GUADALUPE, UPPER CALIFORNIA.

I certify in due form, that the foregoing is a faithful copy made to the letter from its original the "espediente" of the mine of Santa Clara or New Almaden, which exists in the Archives under my charge,

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20th day of January, 1

BRI

I hereby certify that
true and proper handwr
worthy of all faith and
placed my hand and offi

I, Jesus Vegar, Not
the last preceding signa
signature of that gentle
known to me, when I l
way to Upper Californi
house of Barron, Forbe
gentlemen, I sign and
day of March, 1850.

We, the 1st Constitu
this, certify and accred
Notary Don Jesus Vej
passed before him. S
1850.

I, George W. P. B
America, for this Distr

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to the foregoing Document, are in the true handwriting of the subscribers, who legally hold the situations therein represented, and are worthy of all faith and credit.

In testimony whereof, I hereunto set my hand and seal of office, this first day of December, in the year 1858, in the city of Tepic.

{ SEAL }

G. W. P. PISSELL,
U. S. Consul.

TRANSLATION OF "R. NO. 9." [See Page 286.]

COURT OF THE PUEBLO OF SAN JOSE OF GUADALUPE.

In conformity with the foregoing petition, I, the undersigned, First Alcalde of this jurisdiction, with two witnesses of assistance for want of a Notary Public, went out, this twenty-first day of January, one thousand eight hundred and forty-eight, to the aforesaid mine of New Almaden; that there being no authorized person in the District, I appointed Clemente Laquin, a practical miner, to examine the condition of said mine, which was found worked in conformity to the mining ordinance, the supports being firm, its designs and works in the best order and free from gravel or other impediment, so that it prevents all danger to the operators; and to preserve the mine in a good condition; and the aforesaid expert having made the surveys and other necessary operations, in order to determine the course and lead of the vein to its actual depth, declares the said course to be from north-west to south-east, and its lead to be north-east, and that it overruns one vara with another; that is, that it makes with the horizon an angle of more than forty-five degrees, giving to the parties interested a right to the two hundred varas square, according to Title VIII. Article 7 of the Ordinance. And considering that this mine is worked in Company, I concede likewise the right which is asked of me to four "continuous pertenencias" over the course of the said vein, in the designs of the mine, conformable to the Ordinance, Title XI. Article 2. I concede likewise a right to the improvement of stakes with respect to the variation of the course of the vein, according to Title VIII. Article 11, of the Ordinance, and this in the following order: that is to say, from the mouth of the mine fifty varas towards the south-west, and one hundred and fifty varas towards the N. E., and for the longitude of the four pertenencias one hundred varas towards the south-east, and seven hundred varas towards the north-west over the same course; of the vein, being unalterable, the right and title to the mine, to the grant of land

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conceded in the original act of possession. These duties being performed, I ordered the said expert to proceed immediately to make the said surveys, and to fix on the extremes of the four pertenencias and on each side of the square of two hundred varas, the stakes conformable to the Ordinance. All of which was done in my presence, and of the witnesses of assistance, to which I certify.

JAMES W. WEEKES,
Alcalde.

Filed January 30, 1858.

W. H. CHEVERS,
Clerk.

TRANSLATION OF "A. P. L." [See Page 73.]

SENOR ALCALDE OF FIRST NOMINATION:

Andres Castillero, Captain of permanent Cavalry and at present resident in this Department, before your notorious justification, makes representation, that having discovered a vein of silver, with alloy of gold on the land of the rancho pertaining to José R. Berreyesa, retired Sergeant of the presidial company of San Francisco, and wishing to work it in company, I request that in conformity with the mining ordinances, you will be pleased to fix up notices in the public places of the jurisdiction, in order to make sure of my right, when the time of the juridical possession may arrive according to the laws on the matter.

I pray you to provide in conformity in which I will receive favor and justice, admitting this on common paper, there being none of the corresponding stamp.

Mission of Santa Clara, November 22d, 1845.

ANDRES CASTILLERO.

TRANSLATION OF PETITION OF ANDRES CASTILLERO.

SENOR ALCALDE OF FIRST NOMINATION OF THE PUEBLO OF S^{T}. JOSE GUADALUPE:

I, Andres Castillero, Captain of permanent Cavalry, before your notorious justification, appear and say, that on opening the mineral which I previously denounced in this Court, I have taken out besides silver, with alloy of gold, liquid quicksilver, in the presence of some bystanders, whom I may be able to summon on the proper occasion.

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And considering it necessary to my right, I have to request of you, that united to the document of denouncement, this representation may be recorded, it not going on stamped paper because there is none. I pray you to provide in conformity in which I will receive favor and justice.

Santa Clara, December 3d, 1845.

ANDRES CASTILLERO.

TRANSLATION OF "ACT OF POSSESSION."

There not being found in the Department of California a mining deputation, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws, and there being likewise no professional Judge ("Juez de Letras") in the Second District, I, the Alcalde of First Nomination, citizen Antonio Maria Pico, have come accompanied by two assisting witnesses, resolved to act by virtue of my office, for want of a Notary Public, there being none, in order to give juridical possession of the mine known by the name of Santa Clara in this jurisdiction, situated on the Rancho of the Sergeant José Reyes Berreyesa, because the time having expired, which the mining ordinance designates for the citizen Andres Castillero to show his right, and also for others to allege a better right from the time of the denouncement to this date, and the said mine being found with abundance of metal discovered, the shaft made according to the rules of art, and the elaboration of the mine producing abundence of liquid quicksilver, as shown by the specimens which this Court has, and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have concluded to grant him three thousand varas in all directions, subject to that which the general mining ordinance indicates, it being worked in company, to which I certify, the witnesses signing with me; and this act of possession remaining aggregated to the rest of the expediente, which remains deposited in the archives of my charge, not being done on the respective stamped paper, there being none as prescribed by law.

Juzgado de San José Guadalupe, December —, one thousand eight hundred and forty-five.

(Signed.) ANTONIO MARIA PICO.

Of Assistance: Of Assistance:

ANTONIO SUNOL. JOSE NORIEGA.

Filed January 30, 1858.

W. H. CHEVERS,
Deputy Clerk.

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TRANSLATION OF "G. M. Y." [See Page 147.]

COURT OF THE PUEBLO OF SAN JOSE DE GUADALUPE:

In conformity to the foregoing petition, I, the undersigned First Alcalde of this jurisdiction, with two assisting witnesses for want of a notary Public, went this the twenty-first of January, one thousand eight hundred and forty-eight, to the said mine of New Almaden; that there being no expert mining professor, (facultativo) I appointed Clemente Laquin, a practical miner, to examine the state of said mine which was found worked in conformity to the mining ordinance, the sides being firm, its galleries and works in the best order, and free from rubbish or other impediment, so that it avoids all danger to the workmen, and preserves the mine in good condition. And the said skillful person having made the measurements and other operations necessary to determine the course and inclination of the vein to its present depth, declares said course to be from north-west to south-east, and its inclination to be north-east, and that it exceeds vara for vaaa; that is, that it makes with the horizon an angle of more than forty-five degrees, giving to the persons interested the right to the square of two hundred varas according to Title VIII. Article 7, of the Ordinance. And considering that this mine is worked in company, I grant also the right which is asked me to four consecutive pertenencias upon the angle of the said vein on the surface of the mine in conformity to the Ordinance Title XI. Article 2. I grant also the right to the change of the stakes with respect to the variation of the angle of the vein according to Title VIII. Article 2, of the Ordinance, and this in the order following: that is to say, from the mouth of the mine fifty varas towards the south-west and one hundred and fifty varas towards the north-east, and for the length of the four pertenencias one hundred varas towards the south-east, and seven hundred varas towards the north-west upon the said angle of the vein, the right and title of the mine remaining the same by the favor of land granted in the original act of possession. These proceedings being concluded, I ordered that the said skilful person should proceed immediately to draw the said measures and to fix at the extremities of the four pertenencias and at each side of the square of two hundred varas the stakes in conformity to the Ordinance. All which was done in my presence and that of the assisting witnesses, to which I certify.

JAMES W. WEEKES,
Alcalde.

Filed January 30, 1858.

W. H. CHEVERS,
Deputy Clerk.

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TRANSLATION OF "J. W. W." [See Page 168.]

TO THE JUSTICE OF THE PEACE:

Alexander Forbes in the name of himself and his associates, owner of the mine of silver, gold and quicksilver, known by the name of Santa Clara, and now called New Almaden, and in the name of the Company formed for the working and furnishing of the mine, before you as may be most proper in law, represent that the Mining Ordinance, in Title IX. Article 10, provides that every mine ought to be visited and examined by skillful persons named by the Judge, for the purpose of ascertaining if they are worked in conformity to said Ordinance; and the subscriber desiring to comply with the laws, prays you as the competent Judge (for want of the tribunal to whom it belongs to judge in the matter) that you will be pleased to go with your assisting witnesses to the said mine to inspect its works and labors now being carried on, in conformity to the Ordinance upon the subject; as also to determine the direction and inclination of the vein of the said mine to its present depth, for the purpose of reforming and correcting (since there is occasion for it,) the boundaries of the former act of possession, and to eorrect also such other mistake as may occur in it, according to Title 8th, Article 11, of the same Ordinance, partieularly to decide upon the increase of pertenencias which ought to be possessed by the owners of the said mine, and its contractor (habilitador) for himself and as the representative of the former, and the square which corresponds to the said pertenencias in conformity to the true inclination of the vein.

Wherefore, I beseech you that you will be pleased to have this writing carried into execution in the terms expressed, and when the proceedings are taken, that they may be returned to me for the just protection and ends which may suit the persons interested, you being pleased to admit this on common paper, from the total want of sealed paper in this department.

Pueblo of San José, 19th of Januay, 1848.

Filed January 30, 1858.

W. H. CHEVERS,
Deputy Clerk.

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EXHIBIT NO. 1, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

Ynventario que manifiesta los Muebles Libros y demas Documentos pertenecientes á este Juzgado;

Asaver

50. Legajos de Correspondencias a este Juzgado
2. Legajos con 191 oficios del año 44.
1. idm de barios papeles Sueltos
2. idm con 114 oficios del año 45
1. idm de barios Bandos
1. Copia de espediente en pretencion del Senalamiento de terreno á este Pueblo
1. Ynformacion Sumaria sobre la muerte del Yndigena Juan.
1. Ydm. sobre la muerte del Indigena Ygnacio
1. Ydm. sobre el insendio de la Casa de Don José Noriega.
1. Ydm Contra el Estrangero Juan Copinger
1. Cuaderno de litis entre D. Ygnacio Peralta y Teodoro Sicar.
1. Sumaria Contra Atanasio Mendosa
1. Ydm. Contra los Yndigenas Basibio Gerardo &. retirada la queja.
1. Causa difinitiba contra Miguel Benabides.
1. Espediente promovido por Don Guillermo Gulnac por cobro que hace á D. Guillermo Wilch.
1. Ynformacion Sumaria Contra Teodoro Arellanos.
1. Legajo sobre Elecciones de partido del ano 43.
1. Ydm de Elecciones de Alcalde del año 43.
1. Sumaria Contra Juan José Castro
1. idm Contra Antonio Mesa.
1. idm. Contra José Antonio Higuera.
1. idm Contra Mariano Hernandez
1. idem Contra Jorge Farguson por queja de D. José Martinez
1. idm. Contra Dolores Valenzuelá por escandalo
1. Ydm. Contra Gervacio Soto y Nicolas Valencia.
1. Posecion de la Mina de Sta Clara á D. Andres Castillero.
1. Lista de los besinos que deven a el Sacristan Duarte.
1. Legajo perteneciente á Jose Duarte y Francisco de la mancha.
1. idm de asuntos bersados entre D. Joaquin Gomez y Pedro Chavolla.
3. Legajos de Cuentas de Sindicos.
1. Legajo marcado año 44 de papeles Sueltos
1. idm con 39 representaciones
1 idm. del año 45. de barios papeles Sueltos
1. Ynbentario de los bienes del finado José Higuera

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1. Documento sobre el rancho de la Laguna
1. Cuaderno borrador de actas y oficios del año 39.
1. idm del año 39. 40 y 41.
1. idm del año 40. y 41.
1. idm de Juicios berbales del año 40. 41 y 43.
1. idm idm del año 39.
1. idm de conciliaciones del año 39.
1. idm. Ynformes á el Govierno de 39. 40. y 41.
1. idm. del año 43.
1. idm del año 42.
3. idm. del año 44. y 45.
1. padron del año 40
1. Libro legistros de fierros y Solares
1. Sumaria contra los Reos de S. Francisco con todo y Rios.
2. Constituciones una Española y otro federal.
1. Ley reglamentaria del año 37.
1. Ley Colonial del año 29
1. acta Constitutiba del año 24
1. Bases y Leyes Constitucionales del año 36
1. idm. Bases organicas del año 43.
2. Padrones uno de la Contra Costa y otro de Sta. Clara
1. Obligacion echa por D Juan Alvires á fabor de D. Carlos Wibar
2. Sillas biejas
2. Bancas
1. Candelero
1. Servisio de Escribia
1. Mesa con Carpeta de Puño Ordinario
1. Ligenas para Contar papel
2. Cuchillas biejos
1. tambor
1. fierro de herrar
13. Cuaderniyos de Papel blanco
2. Cajas de obteses
1. puñal de Ysidro Sancez
1. Escoba
1. bara de Justicia
1. Lanza
1. Mastil de grillos
1. bando en una tabla
1. Estante para guardar el Archivo con su llave
1. Sepo nuebo
1 bandera tricolor
1. Candado grande con llave

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DE LA SUB-PREFECTURA

2. Cuadernos de borradores de oficios
10. Legajos de oficios
4. Candados sin llave.

NOTA.

Quedan En monterrey tres pares de grillos pertenecientes á este Juzgado

1. idm. un par que se llevo el Chano Cuando se fugo.
1 idm. que se lleva un Yndio.
Pueblo de S José En°. 2. del 846.

ANTONIO M^A. PICO
(Rubric.)

Pueblo de S. José G. En° 2. 1846.
Recibi todos los Documentos que el presente inventario contiene
PEDRO CHABOLLA
(Rubric.)

EXHIBIT No. 2, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

PREFECTURA DEL 2° DISTRITO.

Con esta fhā en uso de las facultades que me confiere la ley de 20 de Marzo de 1837 hé tenido ha bien nombrar en ese Pueblo de San José para el año entrante de 1846, p^a Juez de Paz 1° proprietario á D^n. Dolores Pacheco, para Juez de Paz 2° proprietario á D^n. Pedro Chavolla, para Juez de Paz 1° Suplente á D^n. Valentin Higuera y para Juez de Paz 2° Suplente á D^n. José Fernandez.

Y lo aviso a V. a fin de que el dia 1° de Enero proximo vinidero les veuba á dhōs Jueces el juram^to. de estilo, para que queden en posesion de sus encargos, dando a V. las mas cumplidas gracios por los servicios que há prestado durante el tiempo de su encargo.

Dios y Libertad, Monterey Dbrē 15 de 1845.

MAN^L CASTRO
(Rubric.)

Sōr Alcalde 1° del Pueblo de S^n José
59

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EXHIBIT No. 3, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

BRITISH VICE CONSULATE FOR CALIFORNIA
STA CLARA 14TH AUGUST 1847

Sir

I have received information from the person in charge of the Quicksilver mine of Sta Clara that two persons have commenced digging a pit by the direction of Mr G Cook, within the limits of the juridical possession of the said mine, and upon remonstrating with them, they have refused to discontinue their operations.

Permit me to refer you to the documents which exist in your office upon which was founded your conviction of the justice of your decision in relation to the claim of Mr Cook in March last, and to request that you will be pleased to adopt such measures for protecting the rights of the owners of the said mine and of those who are legally interested in the same as you may deem most conducive to that end.

I have the honor to be
Sir
Your most Obedient Servant
J ALEX FORBES
V Consul

John Burton Esquire
Justice of Peace
Pueblo de San José

EXHIBIT No. 4, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

INVENTORY—CITY PROPERTY.

Copy.

Ynbentario formado de los muebles y Documentos que ecisten en este archibo y se entrega el nuebo Juez. Dn. Juan Boston el dia 10. de Nbrē de 1846. Primeram^te.

1. Cuaderno manuscrito de la Ley reglamentaria en este Jusgado.
1. Cuaderno de la Acta Constitutiba.
1. Cuaderno de las Vases de tamballa.
1. Cuaderno de forro asul de la Luz Federal
1. Cuaderno de conciliaciones que se ha llevado por este Jusgado en este año.

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1. Libro de Registros de fierros y solares.
1. Cuaderno de la constitucion Española.
1. Ley colonial en dos Pliegos de papel manscrita.
1. Causa pend^te contra Ysidro Sanchez y Fran^co Soto.
1. Legajo de Bandos del año 45.
1. idm. de Bandos. de 45. 46 y 40. con respecto. a elecciones y ordenes del Gov^no y Alcaldes.
1. Cuaderno de la Constitucion Federal.
1. Legajo de Papeles Sueltos de 44. 45 y 46. con respecto a Cuentas particulares
1. Causa principiada por el individuo Atenogenes Barragan.
1. Cuaderno de Borradores del año 42.
1. Legajo de la informacion del Rancho de Alvirez del año 45.
1. Espediente promovido por el fondo legal del terreno pretendido por este Jusgado p^a esta Poblacion desde el año de 18
2. Cuadernos de Borradores de oficios dirigidos al Govierno y barios sujetos del año 46.
1. Cuaderno con respecto a informaciones de terrenos. del presente año de 46.
5. Cuadernos. que contienen del espediente del terrenos de Alvirez. y de Barradores des de el año 40 a 45.
15. Cuadernos de oficios p^r Borradores en este legajo esta la causa pendiente de las cridudas al Cap^n Liverme.
2. Legajos medianos de cuentas de sindicos de este año 39. y 41. y 43.
1. Padron de la Contra Costa del año 45.
18. Cuadernos en sumarias concluidas que sirban de modelos en este Jusgado.
1. Legajo mediano con respecto a elecciones de Diputados el Congreso.
7. Carpetas de oficios. de los años 41. 42 y 43.
29. Representaciones de los años de 41. 42 y 43.
20. oficios del Jusgado de la Villa de 41 y 42.
1. Docum^to sobre la Eleccion de partido de 1° y 2° Alcalde del año de 1843.
1 Docum^to sobre la Eleccion de Partido en el año de 1843.
1. Asunto Benado con Dn Joaq^n. Gomez y Pedro Chabolla.
1. Asunto de las Declaraciones de Jose Duarte del año 42.
1. Asunto de las Cuentas de Mariano Duarte.
101. Oficios en contestaciones del Gov^no del año 46. y el acta del Sueldo de Secretario
3. Sumarias pendientes del presente año 46.
1. Ynbentario de los Vienes que recivio de los erederos del finado. Jose Higuera. Fulgencio Higuera, como Albacea.
1. Legajo de papeles Sueltos. de barios asuntos
107. Oficios del año 43.

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7. Carpetas en oficios desde el año de 1800 hasta 836.
47. Legajos de los años pasados en oficios y contestaciones del Govno.
39. Representaciones en legajo del año 45.
4. Ynbentarios de este Archivo de los años pasados. con uno del finado Prado Mesa.

MUEBLES DEL JUSGADO.

1. Mesa de escrivir con su carpeta asul.
1. Escoba.
1. Armario del Archibo
1. Candelero. de oja de lata
1 Servicio de escrivir de Brome, que son 3. piesas.
1 Candado. y Llabe del Jusgado
2. Candados y una Chapa Chica sin llabes.
1. Par tigeras Viejas
1. Baston. y Vara de Justicia encarguillada con plata.
Pueblo de S. Jose. G. Nbrē 10 de 1846.

Septr. 20. 1847. 3 new register book. 1 Slate. 1 Clock belonging to Govt. U S. Flag. 1 Map of Pueblo lands. 2. Maps of the Town plot.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA, } ss.
CITY OF SAN JOSÉ. }

I hereby certify that the foregoing on pages. 1. 2. 3 and 4 of this, contains a true, and correct copy of an original Document now on file in the Archives of the City of San Jose, County and State aforesaid, and at this present time under my charge.

{ SEAL } Witness my hand and the Seal of the aforesaid City. hereto affixed this 29th day of August A. D. 1857.

CHAPMAN YATES
City Clerk.

EXHIBIT No. 5, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

The following communications from the Mayor and Wm. F. Lovett were ordered transcribed on the minutes, and the originals placed on file:

To the Honorable Common Council of the City of San Jose—Gentlemen:

In accordance with a resolution of the Common Council I called upon Mr. White, former Alcalde, and demanded of him whatever

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papers and public documents he might have pertaining to the lands of the Pueblo de San Jose. The only papers of the kind which he had are papers relating to sureties, and which are herewith transmitted to your honorable body.

In accordance with another resolution I have employed Mr. F. Lovett, who is well acquainted with the Spanish language, to examine and arrange all the Publick Documents and papers in the City Archives. Under my supervision, he has made a thorough examination, and has well arranged the papers there found, as will be shown by the accompanying report. I regret that the search did not exhibit any thing which will throw much light upon the Pueblo title or grants made within its limits; except the field notes of the survey of the 500 acre tracts and the notes of Lyman and a few deeds and grants, but little has been discovered. And I regret to say that many of the books and papers have been cut and mutilated, and no doubt much matter of great importance has been removed or destroyed in years gone by, whether through design or carelessness I cannot say. Yet it is certain that at some time past important papers have been removed or destroyed, leaving now but little of much consequence.

THOS. WHITE,
Mayor of San Jose.

To the Hon. Thomas White, Mayor of the City of San Jose:

SIR: In accordance with your instructions I have diligently examined the Archives of this city now in the Mayor's Office, and after a careful examination, I am able to make you the following report. The papers are all arranged in alphabetical order and are as follows:

A—Papers in case of Antonio Valencia for murder; Old election returns; Papers in the Estate of Graves Bernal and Jones Horse; Charles White's Docket; Papers in case of Walkinshaw vs. Forbes; Papers in case of B. H. Thompson; Papers in case of Ord; Official papers of perfectura for 1842; Census for 1845; Journal of Town Council 1849; Papers relating to Naglee and Neleigh, 1848; Notes and declarations of Geo. W. Bellamy, Oct. 27, 1847; Alcalde's Correspondence, 1840; Official Letters of Charles White; Papers relating to a Quicksilver Mine of Alvardo; Plan of San Jose Cemetery; Memorial presented by the Secretary of the Interior and Exterior Relations, 1829; Alcalde's Letters; Petty cases before Alcalde's Courts; Loose and Miscellaneous papers (of no value;) Official Documents of Perfectura for 1841, 1842 and 1843; Alcalde's Correspondence of San Franciscita; Correspondence of Priests of Santa Clara; Testimony of Duart and de La Mancha.

B—Alcalde Dimick's Docket; Election of Alcalde 1843; Miscellaneous Papers; British Consuls Letters; Papers in case of Territory of California vs. Juan Gonsales; Papers in case of Territory of Cali-

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fornia vs. Chavolla; Papers in case of Haun vs. Bellamy; Alcalde's Letters from Monterey; Part of Testimony in case of Chavolla; Letter from Padre Real; Auxilliary Alcalde de Santa Clara; Official Documents of the Jusgado de Pueblo 41, 42, 43; Letters and loose papers from Gov. Bonica and Aguillo from 1777 to 1815; Of money paid and received for the year 1846; Petitions for Land; Testimony before the Alcalde; Election 1843; Government Correspondence 1843; Papers of Jusgado and Census of San Francisco 41, 42, 43; Military Correspondence 41, 42, 43; Expenses of Jusgado de 1846; Election for Delegates to the meeting of the different Pueblos of California:

C—Loose Papers year 1841; Complaints before Alcaldes' 41, 42, 43; Miscellaneous Papers in the case of Robelus vs. Campbell; Papers in the Court of First Instance; Printed copy of Acts of First Legislature.

D—Thirteen packages of Alcaldes' Correspondence from 1795 to 1827.

E—Eleven packages of Alcaldes' Correspondence from 1828 to 1833.

F—Fifteen packages of Alcaldes' Correspondence from 1834 to 1841.

G—Five packages of Alcaldes' Correspondence from 1842 to 1846; and one package of Alcaldes' old Dockets.

H—Papers relating to the Pueblo Lands consisting of the field notes of J. D. Hutton, &c.; Grants and Deeds; Notes of Lyman.

I would also state that there are but few or no papers in the Archives for the years 1844, 1845, 1846, except such as are mutilated, and torn and cut.

The different maps of the city are now in the hands of Thomas White, Surveyer.

I remain yours, &c.,

WM. E. LOVETT.

City of San José, March 3d, 1852.

An important Document accompanying the above communications relating to suerte lands was ordered to be carefully filed.

City of San José, County of Santa Clara, and State of California.

I hereby certify that the above and foregoing on pages 1, 2, 3, 4, and 5, inclusive, is a full, true and correct copy from a book in the Archives of said City, in which is recorded the minutes or proceedings of the Common Council from the year 1850 to the year 1855, and that the same is now under my charge.

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In testimony whereof, I have hereunto set my hand and affixed the seal of said City this 24th day of September, 1857.

{ SEAL }

CHAPMAN YATES,
City Clerk.

EXHIBIT No. 6, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

G. C. COOK,
vs.
JAMES ALEX. FORBES.

On complaint of plaintiff that Andreas Castillero, James Alex. Forbes, José Maria del Ecul, José Castro, Secundino Robles, and Chota, alias Theodore Robles, were to work on his land contrary to law, and prayed that they be removed. A summons was issued bearing date March 17th, 1847, returnable on Friday next, which were served and returned according to law. The parties having appeared the case is continued until the mine can be surveyed. Two men were sent to the mines to measure and report thereon, who went and returned their report. Two notifications were issued to said commissioners who charge the sum of five dollars for two witnesses, and the same for the Secretary who went with them. After thus much the case stands still until further orders at the cost of plaintiff. Costs taxed at twenty-seven dollars and seventy-five cents. Clerks for surveying fees, $7 each; Witnesses, $5 each.

Capt. Fisher and Isaac Branham, witnesses.

José Fernandez, Clerk.

Belden became responsible for costs April 6th, 1847.

Justices' Fees, $3 50; Clerk's, $3 25; Sheriff's, $4.

Costs paid in full April 7th, 1847.

CLERK'S OFFICE, CITY OF SAN JOSÉ, COUNTY OF SANTA CLARA, AND STATE OF CALIFORNIA.

I hereby certify that the foregoing is a true copy of a record now on file in the public Archives of the City of San José.

Given under my hand and seal of said City, September 31st, A. D. 1857.

{ SEAL }

CHAPMAN YATES,
City Clerk.

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EXHIBIT No. 7, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

NOTICE.

Aviso al Publico.

El C. Dolores Pacheco, Jues de 1ª Nominacion del Pueblo de S. José Gpe.

El Ciudadano Lorenzo Pinedo se ha presentado en este Jusgado denunciando una mina de Plata con ley de oro y asogue cituada en el paraje de Capitancillos Rancho conosido de Justo Larios, en esta Jurisdiccion y cumpliendo con lo que previene la ordenanza de mineria, mando se publique para que pasandos los cuarenta dias sino uviese quien alegue mejor dro se le de la posecion Juridica.

Pueblo S. José, Junio 7 de 1846.

DOLORES PACHECO.

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, } ss.
CITY OF SAN JOSE. }

I hereby certify that the foregoing contains a true and correct copy of an original document now on file in the archives of the City of San José, County and State aforesaid, and at this present time under my charge.

Witness my hand, with the seal of the aforesaid city hereunto affixed, this 31st day of August, A.D. 1857.

{ SEAL }

CHAPMAN YATES,
City Clerk.

Filed Nov. 21st, 1857.

J. EDGAR GRYMES,
Deputy.

TRANSLATION OF "EXHIBIT No. 7," ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

Notice to the Public.

The citizen Dolores Pacheco, Judge of the 1st. Nomination of the Pueblo of San José, Guadalupe.

Whereas the citizen Lorenzo Pinedo, has presented himself in this court, denouncing a silver mine, with alloy of gold and quicksilver, situated on the Capitancillos Rancho, known as that of Justo Larios,

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in this jurisdiction, and complying with the provisions of the mining ordinance, I order the same to be published, in order that at the end of forty days, should there be no one who can allege a better right thereto, the Juridical possession thereof be given to him.

Pueblo of San José, June 7th, 1846.

DOLORES PACHECO.

EXHIBIT No. 8, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

NOTICE.

Aviso al Publico.

El Ciudadano Dolores Pacheco, Juez de 1ª. Nominª. del Pueblo de S. Jose Gpe.

El C. Bueno Balencia, se ha presentado en heste Jusgado denunciando una mina cituada en el Rancho de Dn. Jose de Jesus Vallejo, Jurisd de la Contra Costa al Nto y cumpliendo con lo que previene la ordenanza de mineria mande se publique para que pasados los cuarenta dias sino uviese quien alegue mayor dro. selede la posecion Juridica.

Pueblo de San José, Gpe., Abl. 24, de 1846.

DOLORES PACHECO.

Araneco Altamerano.

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, } ss.
CITY OF SAN JOSE. }

I hereby certify that the foregoing is a true and correct copy of an original document now on file in the archives of the City of San José, County and State aforesaid, and at this present time under my charge.

Witness my hand with the seal of the aforesaid City hereto affixed, this the 31st day of August, A.D. 1857.

{ SEAL }

CHAPMAN YATES,
City Clerk.

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TRANSLATION OF "EXHIBIT No. 8," ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

Notice to the Public.

The citizen Dolores Pacheco, Judge of 1st Nomination of the Pueblo of San Jose Guadalupe.

Whereas the citizen Bruno Balencia, has presented himself in this court, denouncing a mine situated on the Ranch of Don José de Jesus Vallejo, Jurisdiction of Contra Costa north, and complying with the provisions of the mining ordinance I order the same to be published, so that at the expiration of forty days, should there be no one who can allege a better right thereto, the juridical possession thereof be given to him.

Pueblo of San José Gpe., Apl. 24, 1846.

DOLORES PACHECO.

EXHIBIT No. 9, ANNEXED TO THE DEPOSITION OF CHAPMAN YATES.

NOTICE.

Aviso al Publico.

El Ciud^{n}. Dolores Pacheco, Alcalde de 1^{a}. Nominacion del Pueblo de S. José Guadalupe.

El C. Pedro Hernandez se ha presentado en este Jusgado denunciando una mina cituado en el Rancho del ojo de la Coche de esta Jurisd^{n}. y cumpliendo con lo que previene la ordenanza de mineria, mando se pregone publicam^{te} p^{a} que pasados los cuarenta dias sino huviese quien alegue mejor derecho se la de la posecion Juridica.

Pueblo de S. José Gpe., Mro. 2, de 1846.

DOLORES PACHECO.

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA, } ss.
CITY OF SAN JOSE. }

I hereby certify, that the foregoing is a true and correct copy of an original cocument now on file in the archives of the City of San José, County and State aforesaid, and at this present time under my charge.

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MAY 20 1998		
U. C. BERKELEY		
MAR 29 2000		

UNIVERSITY OF CALIFORNIA, BERKELEY
BERKELEY, CA 94720

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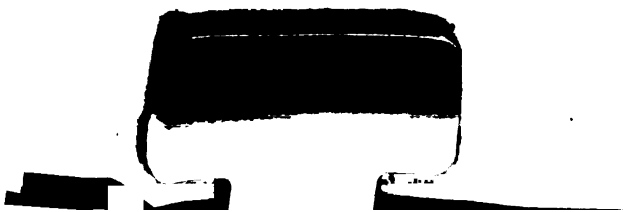

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